

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL)
MANAGEMENT, L.P.,) Dallas, Texas
) Tuesday, January 26, 2021
) 9:30 a.m. Docket
Debtor.)
) MOTION FOR ENTRY OF ORDER
) AUTHORIZING DEBTOR TO
) IMPLEMENT KEY EMPLOYEE
) PLAN [1777]
)
_____)
)
HIGHLAND CAPITAL) **Adversary Proceeding 21-3000-sjg**
MANAGEMENT, L.P.,)
)
)
Plaintiff,)
)
v.) PLAINTIFF'S MOTION FOR A
) PRELIMINARY INJUNCTION AGAINST
HIGHLAND CAPITAL)
MANAGEMENT FUND ADVISORS,) CERTAIN ENTITIES OWNED AND/OR
L.P., et al.) CONTROLLED BY MR. JAMES
) DONDERO [5]
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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1 DALLAS, TEXAS - JANUARY 26, 2021 - 9:40 A.M.

2 THE COURT: All right. We have Highland settings
3 this morning: a Motion for Approval of a KERP, which I didn't
4 see objections to, and then a Preliminary Injunction hearing.
5 Let me get appearances from the parties who have filed
6 pleadings.

7 For the Debtor team, I see Mr. Morris. Who do we have
8 appearing?

9 MR. POMERANTZ: Good morning, Your Honor. It's Jeff
10 Pomerantz and John Morris appearing on behalf of the Debtor.
11 I will handle the KERP motion, which we'll propose goes first
12 and quickly, and then Mr. Morris will handle the adversary
13 proceeding.

14 THE COURT: All right. Very good.

15 All right. Let me get appearances from the Defendants in
16 the preliminary injunction matter. Do we have Mr. Kane or
17 someone for CLO Holdco?

18 MR. KANE: Yes, Your Honor. John Kane for CLO
19 Holdco, Ltd.

20 THE COURT: All right. What about for the Funds and
21 Advisors? I guess we have a couple of law firms involved.
22 Who do we have appearing for the K&L Gates firm?

23 MR. HOGWOOD: Good morning, Your Honor. This is Lee
24 Hogewood with K&L Gates, and also with our firm appearing
25 today is Emily Mather.

1 THE COURT: Okay. I didn't get Emily's last name.
2 Could you repeat that?

3 MR. HOGWOOD: I'm sorry, Your Honor. Emily Mather,
4 M-A-T-H-E-R.

5 THE COURT: Thank you.

6 All right. For the Munsch Hardt team, do we have Mr.
7 Rukavina or someone else appearing?

8 MR. RUKAVINA: Your Honor, good morning. This is
9 Davor Rukavina. I represent all of the Defendants in the
10 adversary except CLO Holdco.

11 Pursuant to the Court's instructions, Mr. Dondero is also
12 present here in my conference room, so he is here. He is not
13 on the camera, but he is here.

14 THE COURT: Okay. All right. And does Mr. Dondero
15 have counsel, his individual counsel appearing today?

16 MR. WILSON: Your Honor, John Wilson for Jim Dondero.

17 THE COURT: Okay. Thank you. Do we have Creditors'
18 Committee lawyers on the phone today?

19 MR. CLEMENTE: Yes, Your Honor. Good morning.
20 Matthew Clemente; Sidley Austin; on behalf of the Official
21 Committee of Unsecured Creditors.

22 THE COURT: All right. Thank you.

23 All right. Well, obviously, if any other lawyer is dying
24 to chime in at some point today, I will consider letting that
25 happen. But, again, I think we've got the parties who have

1 filed pleadings having appeared at this point. So, let's turn
2 to the KERP motion. Mr. Pomerantz?

3 MR. POMERANTZ: Yes, Your Honor. Good morning again.
4 On January 19th, the Debtor filed its motion for approval of a
5 Key Employee Retention Program which would substitute out its
6 annual bonus plan.

7 We have not received any opposition to the motion,
8 although the United States Trustee did ask some questions
9 which we are prepared to address in connection with the
10 proposed proffer of Mr. Seery's testimony. I'm happy to make
11 a full presentation of the motion to Your Honor, if you would
12 like, or I could just present Mr. Seery's proffer, which I
13 should -- which I believe will establish the factual predicate
14 and the evidence to support the motion.

15 THE COURT: All right. Let's just go straight to the
16 proffer, please.

17 MR. POMERANTZ: Okay. Thank you, Your Honor.

18 PROFFER OF TESTIMONY OF JAMES P. SEERY

19 MR. POMERANTZ: Mr. Seery is on the video today, and
20 if he was called to testify he would testify that his name is
21 James P. Seery, Jr. and that he is the chief executive officer
22 and chief restructuring officer of Highland Capital
23 Management.

24 He would also testify that he was one of the independent
25 directors appointed to the Court on January 9th, 2020.

1 Because of his role with the Debtor, he is familiar with the
2 company's day-to-day operations, including its -- the
3 company's employee and wage benefit and bonus plans relating
4 to the employees.

5 He would testify that he has been involved in the
6 negotiation and drafting of the company's plan of
7 reorganization, and is familiar with the expected operation of
8 the Claimant Trust and Reorganized Debtor post-confirmation in
9 connection with the plan.

10 He would testify that the plan generally provides for the
11 monetization of the company's assets for the benefit of
12 creditors and stakeholders, and he would testify that, as part
13 of the plan process, he worked closely with DSI, the company's
14 financial advisor, to assess both the costs of the Debtor's
15 current employee base and the projected cost of operations in
16 connection with the Reorganized Debtor and Claimant Trust
17 following the effective date.

18 He would testify that, to ensure the continued smooth
19 operation of the company in connection with the continuation
20 and consummation of the plan for the benefit of all
21 stakeholders, that he worked with DSI to determine the
22 appropriate staffing needs necessary for the company's
23 remaining operations.

24 He would testify that he analyzed the current employees to
25 determine which, if any, would need to be continued to be

1 retained by the Debtor and operate during the Reorganized
2 Debtor and Claimant Trust period following the effective date
3 of the plan.

4 He would testify as part of that analysis he reviewed the
5 roles and functions of the non-insider employees with respect
6 to the services that they needed, and he reviewed the wages,
7 benefits, and bonuses for those remaining non-insider
8 employees necessary for those functions.

9 He would testify, that based upon his review, the company
10 determined that it was in the best interests of the estate to
11 terminate the existing annual bonus plan, as it was no longer
12 necessary to effectively incentivize the remaining non-insider
13 employees who would be terminated prior to being entitled to
14 any further payments under the annual bonus plan.

15 He would testify that, instead, the company developed a
16 new retention plan that was designed to incentivize the non-
17 insider employees to remain with the company for as long as
18 they are needed to assist in the effectuation of the plan.

19 He would testify that Mr. Waterhouse and Surgent, arguably
20 two insiders of the Debtor, are not eligible for the retention
21 plan, and that's not because there is any concern regarding
22 their loyalty, but the Debtor is looking at ways to
23 appropriately incentivize and compensate those people as
24 appropriate in the future.

25 He would testify that there are a few persons on the list

1 of people who are part of the retention plan with a title that
2 includes director or manager; however, he would testify that
3 none of those individuals are corporate officers or directors
4 of the Debtors -- the Debtor, and that the titles are for
5 convenience only. He would testify that the individuals who
6 are employed in these roles do not have any authority
7 whatsoever to make any decisions on behalf of the Debtor.

8 He would testify that in connection with the new retention
9 plan, the non-insider employees may be offered the opportunity
10 to enter into a termination agreement with the company that
11 will provide specified benefits and payments in return for the
12 non-insider employee remaining as an employee in good standing
13 with the company through the separation date.

14 He would testify that a key component of the retention
15 plan is that non-insider employees will be entitled to the
16 specific bonus payments provided that they do not voluntarily
17 terminate their employment with the Debtor prior to the
18 separation date and are not terminated for cause.

19 He would testify that that is in contrast to the existing
20 or the prior annual bonus plan, which provided that non-
21 insider employees would not receive their bonus payments if
22 they were not employed by the Debtor on the vesting date for
23 any reason except on account of disability, including
24 termination without cause.

25 Mr. Seery would further testify that the retention plan is

1 being offered to approximately 53 employees, and the projected
2 aggregate amount of payments under the retention plan is
3 approximately \$1,481,000, which is \$32,000 approximately less
4 than the amount that would have been paid to such employees
5 under the annual bonus plan.

6 He would testify that the retention plan includes 20
7 employees who are not entitled to benefits under the annual
8 bonus plan. Fourteen employees are entitled to receive more
9 under the retention plan than they would have received under
10 the annual bonus plan.

11 With respect to the 20 employees I've previously mentioned
12 who are not otherwise entitled to receive anything under the
13 annual bonus plan, the vast majority of those -- 18 -- will be
14 entitled to payments of \$2,500 each, and the other two
15 entitled to payments of \$10,000 and \$7,500, respectively.

16 Mr. Seery would testify that he believes that these
17 additional payments are reasonable in light of the current
18 status of the company and the value to be added to the estate
19 through the retention of these employees, and that this plan
20 is more accurately and narrowly-tailored to achieve the
21 company's reorganization goals.

22 On this basis, Your Honor, Mr. Seery would testify that he
23 presented the proposed retention plan to the independent
24 directors and they agreed with Mr. Seery's assessment that
25 entry into the retention plan was in the best interests of the

1 estate and its creditors.

2 He would also testify that he had negotiations with the
3 Creditors' Committee and its advisors regarding the retention
4 plan and that the Committee is supportive of the retention
5 plan.

6 And that would conclude my proffer of testimony from Mr.
7 Seery, Your Honor.

8 THE COURT: All right. Mr. Seery, if you could say
9 "Testing, one, two" so we can catch your audio and video,
10 please?

11 MR. SEERY: Testing, one, two, Your Honor.

12 THE COURT: All right. There you are. Please raise
13 your right hand.

14 JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

15 THE COURT: All right. Thank you. Is there anyone
16 who has questions at this time for Mr. Seery?

17 (No response.0

18 THE COURT: All right. Well, I'll just double-check
19 with the Committee. It's been represented that you all are in
20 support of this. Mr. Clemente, if you could confirm that on
21 the record?

22 MR. CLEMENTE: That's correct, Your Honor. The
23 Committee has no objection to the motion, so Mr. Pomerantz's
24 statements are accurate.

25 THE COURT: All right. Anyone else?

1 MS. LAMBERT: This is Lisa Lambert for the United
2 States Trustee. The U.S. Trustee has reviewed the actual data
3 about the comparatives, and the U.S. Trustee, based on the
4 stipulations, has no objection.

5 THE COURT: All right. Thank you. Anyone else?

6 All right. Well, the Court will approve this motion.
7 First, while the notice was expedited, the Court finds that it
8 was sufficient under the circumstances. We are many months
9 into the case, it's been vetted by the Committee, and the
10 Court is satisfied with the level of notice here.

11 The Court finds that this is a KERP that is justified by
12 all the facts and circumstance of this case, to use the
13 wording of Section 503(c)(3) of the Bankruptcy Code. There
14 also appears to be a very sound business purpose justifying
15 the proposed KERP. It appears to be reasonable in all ways,
16 and fair under the circumstances, so I do approve it.

17 All right. So if you all will get the order uploaded
18 electronically, I will promise to sign it promptly.

19 MR. POMERANTZ: We will do so, Your Honor. Thank
20 you.

21 THE COURT: All right. So, the preliminary
22 injunction. Mr. Morris, I heard you were going to be taking
23 the lead on that, so go ahead.

24 MR. MORRIS: Indeed. Good morning, Your Honor. John
25 Morris; Pachulski, Stang, Ziehl & Jones; for the Debtor.

1 THE COURT: Good morning.

2 MR. MORRIS: A few items before I give what I hope
3 will be an informative opening statement. I trust that Your
4 Honor has not had the opportunity, because it was just filed a
5 moment ago, to see that the Debtor filed on the docket notice
6 of a settlement with CLO Holdco, Ltd., one of the Defendants
7 here today.

8 THE COURT: I have not seen that. Okay.

9 MR. MORRIS: Right. So you'll find that at Docket
10 1838.

11 THE COURT: Okay.

12 MR. MORRIS: It really is a very simple settlement,
13 Your Honor. In exchange for the withdrawal of CLO Holdco's
14 objection to the Debtor's plan of reorganization, the Debtor
15 is dismissing CLO Holdco from this adversary proceeding with
16 prejudice. There are, you know, some other bells and whistles
17 there, the most important of which to the Debtor is simply
18 that, under the CLO management agreements, most of them but
19 not all of them require that a level of cause be established
20 before the contracts can be terminated, and CLO Holdco has
21 agreed that, before it seeks to terminate a contract for
22 cause, there will be a gating provision or a gatekeeping
23 provision that requires them to come to this Court to simply
24 establish whether or not there is a colorable claim -- not for
25 a determination on the merits, but simply to protect the

1 Debtor from frivolous lawsuits.

2 So that's really the sum and substance of it. Mr. Kane is
3 on the line now, and if I've either inaccurately or
4 incompletely characterized the settlement, I'm sure he'll take
5 the opportunity to supplement the record. But we don't see
6 any need, really, to go through a full 9019 motion here.
7 There's no releases. There's no exchange of money. It's the
8 withdrawal of a plan objection in consideration for the
9 dismissal of an injunctive proceeding.

10 So we did want to alert you to that. And as a result,
11 there was one witness that we intended to call today, Grant
12 Scott. Mr. Scott is the director of CLO Holdco. And with the
13 resolution of the issues between the Debtor and CLO Holdco, we
14 have no intention of calling Mr. Scott today. But I'd like to
15 give Mr. Kane an opportunity to be heard just in case he's got
16 anything to add.

17 THE COURT: All right. Mr. Kane, can you confirm?
18 Do you have anything to change about what you heard?

19 MR. KANE: Your Honor, I do not. The settlement
20 agreement speaks for itself. We did reach an agreement with
21 Debtor's counsel and the Debtor yesterday evening, fairly late
22 in the evening. Mr. Morris's synopsis of the proposed
23 settlement is accurate. The Debtor has agreed to dismiss CLO
24 Holdco from the preliminary injunction adversary proceeding
25 with prejudice.

1 THE COURT: All right. Well, thank you. I've pulled
2 it up on my screen. It's very short and to the point. And I
3 agree with the comment of Mr. Morris that I don't think a
4 formal 9019 motion is required here, given no consideration is
5 going back and forth, or releases. It's just exactly as you
6 described orally. So, I appreciate that. It simplifies a
7 little bit what we have set today. And we will accept this
8 settlement as being in place as we roll forward. All right?
9 Thank you.

10 MR. MORRIS: Thank you, Your Honor.

11 So, before I get to the substance of the argument, I would
12 like to take care of some housekeeping items relative to
13 today's proceedings.

14 THE COURT: Okay.

15 MR. MORRIS: You know, this has been a bit of a
16 challenge for me personally, and it's going to be a little bit
17 of a challenge today for Ms. Canty, my assistant, in part
18 because it's almost like Groundhog's Day. This is, I think,
19 the third time that we're covering some of the same issues.
20 We had covered them the first time on December 16th in
21 connection with what I'll now just simply refer to as the
22 Defendants, the Defendants' motion to try to limit the Debtor
23 from trading the CLO assets. We heard a lot of what we're
24 going to hear today again on January 8th in connection with
25 the preliminary injunction motion against Mr. Dondero. And so

1 there's already a ton of evidence in the record. We do
2 believe that we need to present our evidence today, but one of
3 the challenges that we'll face, and I think we'll be able to
4 do it efficiently, Your Honor, is there may just be some back
5 and forth between various documents. But everything's gone
6 pretty smoothly, and I'm optimistic we'll get through that
7 part of it today.

8 So I want to deal with the exhibits themselves, Your
9 Honor. As you may have seen, there have been a number of
10 different filings relating to the Debtor's exhibits for this
11 particular motion, and I just want to go through the exhibits
12 and make sure that we're all on the same page here. I want to
13 tell the Court exactly what happened and why and where we are
14 today.

15 The Debtor timely filed its original witness and exhibit
16 list on January 22nd. They filed that witness and exhibit
17 list at Docket 39 in this Adversary Proceeding 21-3000. The
18 exhibit list referenced Exhibits A through I'll just say
19 AAAAA. It was a lot of exhibits, and somebody had the wise
20 idea to convert them to numbers, but it wasn't me, so I can't
21 take credit. But we're left with letters, and they go from A
22 through AAAAA.

23 After filing that initial exhibit list, we realized that
24 --

25 (Interruption.)

1 THE COURT: All right. Does someone have their
2 device unmuted? Okay. It went away. Go ahead, Mr. Morris.

3 MR. MORRIS: Thank you. So, shortly after filing
4 that initial exhibit list, we realized that we forgot to file
5 among the exhibits AAAAA. So at Docket #40 in the adversary
6 proceeding, the Court can find Debtor's Exhibit AAAAA.

7 And then we're going to -- I'm going to refer in a few
8 minutes -- I'm going to use in a few minutes some
9 demonstrative exhibits, and I'm going to use them again with
10 Mr. Seery. And these exhibits concern trading in AVYA and SKY
11 securities that you've heard about previously.

12 But I'm pointing that out now because I'm kind of old
13 school, Your Honor, and I won't use a demonstrative exhibit if
14 it doesn't have the evidence in the record. And what we
15 realized, Your Honor, is we made two additional mistakes on
16 Friday with all the papers that we filed. The backup for
17 these demonstratives was mistakenly included on the exhibit
18 list for the confirmation hearing as opposed to the
19 preliminary injunction hearing. That was error number one.
20 And error number two, we hadn't redacted the information to
21 show only the SKY and AVYA.

22 And that's why, Your Honor, at Docket #48, you will find
23 our amended exhibit list that includes what we have identified
24 as Exhibits BBBB as in boy through SSSS as in Sam. And
25 those exhibits, Your Honor, are the backup to the

1 demonstrative exhibits. I don't expect to use them at all,
2 but I do believe strongly that one should not use a
3 demonstrative exhibit unless the evidence is in the record to
4 support it, and now it is.

5 So that's why, Your Honor, I do appreciate your court
6 staff. I do appreciate Your Honor. I think you either had
7 before you and you may have signed an order on redacting.
8 This is what it was all about. It was just to make sure we
9 had the proper evidence in the record, so I appreciate that.

10 At this time, Your Honor, I think, just because I'll be
11 referring to it in the opening, the Debtor would move for the
12 admission into evidence of Exhibits A through SSSSS.

13 THE COURT: All right. Is there any objection?

14 MR. RUKAVINA: Your Honor, there is. Your Honor, I
15 object to UUUU. I'll object to VVVV as in Victor. I object
16 to AAAAA. That's it, Your Honor.

17 I will note that there are several exhibits in here of
18 relevance to CLO Holdco that may not be relevant to my
19 clients, but those are my limited objections for now.

20 THE COURT: All right. Before we ask the nature of
21 your objection, let me ask Mr. Morris: Shall we just --

22 MR. MORRIS: Yeah.

23 THE COURT: -- carve these out for now, and then if
24 you want to offer them the old-fashioned way, we'll hear the
25 objection then?

1 MR. MORRIS: Yes, although I can make it very clear
2 that UUUU should not be in there precisely because it's
3 demonstrative. We had talked that yesterday and I agreed; I
4 just forgot that. UUUU should not be part of the record.

5 THE COURT: Okay. And so you'll just decide later do
6 you want to offer VVVV and AAAAA the old-fashioned way?

7 MR. MORRIS: Correct.

8 THE COURT: All right. So, for the record, I am
9 admitting by stipulation -- with three exceptions I'll note --
10 all of the exhibits of the Debtor that appear at Exhibits 39
11 and, well, and 48. And we're carving out of that admission
12 UUUU, VVVV, and AAAAA, which actually appears at Exhibit --
13 Docket Entry 40. Those are not admitted at this time.

14 (Debtor's Exhibits A through SSSSS, exclusive of Exhibits
15 UUUU, VVVV, and AAAAA, are received into evidence.)

16 THE COURT: All right. Go ahead, Mr. Morris.

17 MR. MORRIS: Yes.

18 MR. RUKAVINA: Well, Your Honor, while we're talking
19 about housekeeping -- Mr. Morris, I apologize. Is there more
20 housekeeping?

21 MR. MORRIS: I'd like to continue. I was going to
22 describe the witnesses.

23 OPENING STATEMENT ON BEHALF OF THE DEBTOR

24 MR. MORRIS: So, Your Honor, the Debtor is going to
25 call three witnesses today. The first witness will be Mr.

1 Dondero, the second will be Jason Post, and then the third
2 will be Mr. Seery.

3 Obviously, Mr. Dondero and Mr. Seery are very familiar to
4 the Court and they will cover much but not all of the same
5 ground that you've heard previously.

6 Mr. Post, I believe, is a new witness appearing in this
7 court for the first time. I understand that he is the chief
8 compliance officer of each of the Debtors [sic]. He had
9 worked at Highland Capital Management, the Debtor, for more
10 than a decade, I believe, but moved over to NexPoint to work
11 with Mr. Dondero shortly after Mr. Dondero resigned from
12 Highland Capital on or about October 10th last year.

13 So those are the three witnesses that we plan to present
14 today, and I'd like to describe briefly kind of what we think
15 the evidence will show.

16 The theme from our perspective here, Your Honor, is that
17 this is a case that is about power and not rights. The Debtor
18 brings this motion for preliminary injunction in order to
19 protect itself from the interference of Mr. Dondero and the
20 Defendants, entities that there will be no dispute he owns and
21 controls.

22 You may have read in the papers, and I suspect you will
23 hear today from the Defendants, the clarion call for
24 contractual rights and the need for this Court to protect
25 their contractual rights. This is a red herring, Your Honor.

1 There are no contractual rights at issue here. What Mr.
2 Dondero and the Defendants really want is to maintain control,
3 or at least to deny Mr. Seery from exercising the Debtor's
4 valuable contractual rights. If there are any contractual
5 rights at issue here, it is the Debtor's. The Debtor is the
6 party to the CLO management agreements, and it's those very
7 rights that are being infringed upon.

8 This was supposed to have been resolved 53 or 54 weeks ago
9 now, Your Honor, when Mr. Dondero agreed and this Court
10 ordered that Mr. Dondero could not use related entities to
11 terminate any of the Debtor's agreements. There is no dispute
12 that each of the Defendants is a related entity for purposes
13 of the January 9th order, since Mr. Dondero and Mr. Norris
14 have already testified that the Defendants are owned and/or
15 controlled by Mr. Dondero.

16 Notwithstanding the plain language of the January 9th
17 order, which Mr. Dondero not only agreed to, but it may be one
18 of the very few orders in this case that he hasn't appealed,
19 notwithstanding the plain language, Your Honor, he persists,
20 and that is why we are here.

21 How do we know that this is about power and not rights?
22 How do we know that everything that's going to be described
23 for you, what the evidence is going to show that this is about
24 power and not rights, is very simple. Mr. Dondero and Mr.
25 Post will testify -- I'm just going to give four, five, six

1 examples here -- are going to testify that Mr. Seery's AVYA
2 trades were not in the Funds' best interests. It's an
3 irrelevant point, Your Honor. There is no contractual right
4 that gives them the ability to terminate because they don't
5 like trades that are being made. They can sell. If they
6 don't like it, they can sell. That's what's really funny
7 about this.

8 But what's -- what makes it even more clear that this is
9 about power and not rights is the evidence is going to show
10 that Mr. Dondero sold AVYA shares throughout 2020. He sold
11 those shares right up until the day he resigned. And yet six
12 days after resigning, NexPoint sends a letter saying, Don't
13 sell any assets.

14 Ms. Canty, can we put up Exhibit number -- Demonstrative
15 Exhibit 1, please?

16 Okay, Your Honor. We have redacted this to shield from
17 public disclosure the name of each fund that's trading, but
18 the backup, as I alluded to earlier, in Exhibits BBBB through
19 SSSSS, some portion of those documents, that's where these
20 demonstrative figures come from.

21 And as you can see, beginning on January 29, 2000,
22 continuing through the bottom of the page, October 9th, 2020,
23 when Mr. Dondero left Highland Capital, he traded millions and
24 millions and millions of dollars in AVYA stock.

25 Can we go to Demonstrative Exhibit #2, please?

1 This chart is really -- no, I apologize if I -- the other
2 one. The AVYA trading activity chart. Yeah.

3 This one is really interesting, Your Honor, because it
4 shows the trading throughout the year of AVYA stock, and you
5 can see the brown bars there represent Mr. Dondero's trades.
6 And you can see just how many trades there are. There are
7 over a million shares, I think, if you added it up. They're
8 represented by the brown bars. You can see him selling AVYA
9 stock throughout the period, sometimes at a price really near
10 its bottom.

11 And then Mr. Seery tries and actually does sell some stock
12 toward the end of the year. That's the green bars on the
13 right. A very, very tiny amount compared to Mr. Dondero. And
14 he sells it at a substantially greater price than Mr. Dondero
15 sold the AVYA stock. And yet they're here telling you, Your
16 Honor, that somehow Mr. Seery is mismanaging the CLOs and they
17 disagree with what he's doing and he's not acting in the best
18 interests of the investors. That's what they want -- but this
19 is what the evidence shows, Your Honor.

20 With respect to SKY, if we could go to the next slide,
21 please.

22 So this is SKY. Now, Mr. Dondero did not trade any SKY
23 securities, but Mr. Seery did. And this was another security
24 -- and we'll get to the evidence in a moment -- that Mr.
25 Dondero interfered with and tried to stop. So Mr. Seery

1 succeeded sometimes and he was stopped sometimes, but the
2 point is, Your Honor, look at the price that Mr. Seery sold.

3 And remember, you heard this before and you're going to
4 hear it again. Nobody from the Defendants ever asked Mr.
5 Seery, Why do you want to trade this? Not that they even had
6 to. Not that Mr. Seery needs to defend himself, frankly.
7 He's got the authority under the management contracts to act
8 in the way that he thinks is in the best interest. But look
9 at this chart. He made these sales, Your Honor, at more than
10 twice the price of the bottom.

11 How can they have any credibility? How can Mr. Dondero
12 and Mr. Post come into this courtroom and assert that Mr.
13 Seery is doing anything other than a fabulous job? He is
14 selling at the top of the market. Because they think that
15 some high -- in the future, it's going to go higher? It's
16 prudent, Your Honor.

17 Mr. Seery is going to tell you the work that he did. He
18 is going to give you the rationale for his decisions. And the
19 only conclusion that I hope and believe the Court will be able
20 to reach is that these were not only rational decisions but
21 they were prudent, taking some money off the table when the
22 stock was near its high.

23 That's how we know, this is more evidence how we know this
24 is about power. It's not about rights. It's not about
25 justice. It's not about anything having to do with anything

1 other than Mr. Dondero wanting to maintain control.

2 How else do we know? What other evidence is there that
3 this is about power and not rights? Again, the timing. The
4 calendar here is going to be very, very important. The first
5 demand from NexPoint from the Defendants that Mr. Seery stop
6 trading came on October 16th. It was less than a week after
7 Mr. Dondero -- like, where does this come from? There's no
8 right to demand stopping of trading. You don't get to do it.
9 And they're going to minimize it. They're going to spend the
10 whole day, Your Honor, either -- either focusing on the law or
11 trying to minimize. And they'll say, well, it was just a
12 request, Your Honor. And if it was a third-party request, I
13 bet Mr. Seery -- Mr. Seery is going to tell you, if it was a
14 third party, he wouldn't care. But when you put all of this
15 together, it is oppressive. It is an exertion -- it's an
16 attempt at exertion of control. That's how it's perceived and
17 that's actually what happened.

18 Do you need more evidence? Again, they'll talk about
19 termination for cause and how they have the right and the
20 Court -- you, Your Honor, don't have the power to infringe
21 upon their contractual rights. But there will be no evidence.
22 Absolutely none. Mr. Post is going to tell you, in fact, that
23 he has no evidence of any breach, of any default, of any
24 reason whatsoever that cause might exist for the termination
25 of these contracts. That's how you know this is about power

1 and not rights.

2 Last point on the issue of power versus rights: Who were
3 the counterparties to the CLO agreements? Did the CLO Issuers
4 -- where are they? They're not here. They're not here to
5 tell the Court that Mr. Seery is breaching his duty. They're
6 not here to tell the Court that the Debtor is in default. In
7 fact, what Mr. Seery is going to tell you, and it won't be
8 rebutted, is that the CLO Issuers are close to finalizing a
9 deal that will permit the Debtor to assume the CLO management
10 contracts.

11 Mr. Post or Mr. Dondero might get up on the stand today
12 and say, oh, because people have left the firm, that somehow
13 they don't have the ability to service the contracts anymore.
14 You know who doesn't believe that? The contractual
15 counterparty, the Issuers. It's about power, Your Honor.
16 It's not about rights.

17 There is substantial evidence that warrants the imposition
18 of a preliminary injunction, substantial evidence, much of
19 which you've heard already.

20 The October and November letters demanding or requesting
21 that the Debtor halt trades. There's no right to that.

22 Mr. Dondero's interference with the support of Joe Sowin,
23 the Advisors' trader, around Thanksgiving, when they actively
24 moved in. And it's in the emails. It's in the record. We'll
25 put in the record again.

1 And then he made the threat to Thomas Surgent -- Mr.
2 Dondero made the threat to Thomas Surgent about potential
3 personal liability.

4 The ridiculous -- remember the ridiculous motion that was
5 heard on December 16th, a motion so devoid of factual or legal
6 basis that the Court granted the Debtor a directed verdict and
7 dismissed the motion as frivolous? Notably, neither Mr.
8 Dondero nor Mr. Post testified at that hearing. Yet, within a
9 week, Your Honor -- the hearing was on a Wednesday. The
10 hearing was on Wednesday, December 16th. The Court entered
11 the order on Friday, December 18th. On Monday, December 21st,
12 the next business day, Mr. Dondero and Mr. Post and the
13 lawyers for the Defendants held conference calls to figure out
14 what to do next.

15 And the very next day, the evidence is going to show --
16 it's already in the record -- Mr. Dondero again actively
17 stopped Mr. Seery's trades from being effectuated. They sent
18 their first letter. This is less than a week after that
19 hearing, Your Honor. They sent another letter asking the
20 Debtor -- again, they requested -- minimize -- this is what
21 you're going to hear: Well, we just sent a letter requesting
22 no more trading.

23 What happened the next day, December 23rd? They send
24 another letter and they say, We're thinking about terminating
25 the contracts. Now we think we're going to terminate the

1 contracts. And we just want to let you know we're thinking
2 about terminating the contracts.

3 And we call them -- and Mr. Seery is going to testify to
4 this -- we say, What are you doing? Every time we just said,
5 Please withdraw your letter. There's no basis for doing this.
6 Leave us alone and let us do our job. They wouldn't -- they
7 refused to withdraw the letter.

8 And finally -- again, Mr. Seery will testify to this -- we
9 told them, If you think you really have a basis for
10 terminating the contract, make your motion to lift the stay.
11 And if you don't, the Debtor will file the motion that brings
12 us here today.

13 And that's how we got here, because they continued to
14 interfere with the trading. They continued to send these
15 specious letters that are implicit threats. Mr. Seery is
16 going to tell you that every one of these, he -- is an
17 implicit threat. We asked them, Just withdraw the letters and
18 stop it. We asked them to make their own motion if you think
19 so strongly of it. They wouldn't do that, either. They just
20 want it hanging out there. They just want it all hanging out
21 there over Mr. Seery's head so that he knows somebody's --
22 somebody's watching and somebody's planning, you know, to take
23 action.

24 It's not right, Your Honor. They have no right to any of
25 this. There's nothing in the contract that allows them to

1 make even a good-faith -- to make any claim that they have
2 cause to terminate the contract. They have no right under any
3 circumstances to stop Mr. Seery from trading.

4 What they are going to tell you is there's no agreement
5 between the Advisors and the Debtor that requires the Advisors
6 to execute the trades. And they're right about that. They're
7 actually right about that. But here's the thing, Your Honor.
8 What Mr. Seery is going to tell you is that Advisors has the
9 trading desk. For more than a decade, they executed the
10 trades. Through the entirety of this bankruptcy case, until
11 Mr. Dondero left Highland, they executed the trades. Even
12 after Mr. Dondero left Highland in October, they continued to
13 execute the trades. And on December 22nd, they fold their
14 hands and they say, Nope, I don't care about the course of
15 dealing, I don't care what impact it has, you can't make me do
16 it. So Mr. Seery has tried end-arounds, and that'll be in the
17 record, too, and that's when the threats to Surgent come.
18 That's when the threat to Surgent come, when we try to do the
19 workaround. Cannot do it.

20 This is just not right, Your Honor. It's just not right.
21 There's order -- there's the January 9th order. There was the
22 TRO that was in effect that we're going to hear about again,
23 because that TRO not only applied to Mr. Dondero, it prevented
24 him from conspiring with or even encouraging a related entity
25 from engaging in prohibited conduct. And that prohibited

1 conduct, as Your Honor knows, because it's your order, is
2 plain and as unambiguous as can possibly be: Don't interfere
3 with the Debtor's business. It's all we're asking for. It's
4 the only reason we're here today.

5 Interestingly, Your Honor, probably the best piece of
6 evidence that I'll put in front of you today are going to be
7 the words out of Mr. Post's mouth, because basically what he's
8 going to tell you is that, as chief compliance officer, he has
9 never once in the history of his employment told Mr. Dondero
10 to stop. In fact, what he's going to tell you is that he
11 defers to the investment professionals, and that but for the
12 TRO that is consensually in place today, it would depend on
13 the facts and circumstances as to whether or not he actually
14 does anything as chief compliance officer to stop this
15 conduct. Depends on the -- maybe he can explain to Your Honor
16 what facts and circumstances he thinks, as chief compliance
17 officer, would allow the Advisors to interfere with the
18 Debtor's business. It'll be interesting to hear him answer
19 that question.

20 That's all I have, Your Honor. I look forward to
21 presenting the evidence today. I'd like this done once and
22 for all. It's time to move on. And the Debtor -- the Debtor
23 is in bankruptcy. Your Honor, I think, has every power, every
24 right, and frankly, you know -- I feel very strongly about
25 this, obviously, Your Honor -- the Debtor needs the breathing

1 space and to be left alone so it can do its job. And we'll
2 respectfully request at the end of this that the Court enter
3 an order allowing it to do so.

4 Thank you, Your Honor.

5 THE COURT: All right. We were hearing some
6 distortion there, I'm not sure where it was coming from, but
7 we'll try to keep it reined in.

8 Mr. Rukavina, your opening statement.

9 MR. RUKAVINA: Your Honor, thank you. Can the Court
10 hear me?

11 THE COURT: Yes.

12 OPENING STATEMENT ON BEHALF OF CERTAIN DEFENDANTS

13 MR. RUKAVINA: Your Honor, I think it's important
14 first to note a few obvious things. One, what we're talking
15 about today is enjoining future rights, future rights under a
16 contract. Hearing Mr. Morris's opening, it sounds like we're
17 trying a breach of contract case. There is no declaratory
18 relief sought for whether there is grounds for a breach of
19 contract case. And prior to assumption and prior to
20 confirmation, the automatic stay applies.

21 So let me be clear that what they're asking the Court to
22 do today is to excise from these contracts our rights in the
23 future, effectively for all time, as I'll explain.

24 The second thing that merits real consideration is that it
25 is the Funds, Your Honor, not the Advisors, it is the Funds

1 that have the right to remove the Debtor as manager.

2 Those Funds, as you will hear, have independent boards.

3 Mr. Dondero doesn't own those Funds. He's not on those

4 boards. He doesn't control them.

5 When Mr. Morris talks about Mr. Norris's prior testimony,

6 that testimony was limited to the Advisors. And yes, Mr.

7 Dondero does own the Advisors, and Mr. Dondero, while I won't

8 say controls the Advisors, certainly has a lot of input. That

9 is not the case for the Funds, which are the ones with the

10 contractual powers here to remove the Debtor.

11 You will hear that those -- that that board or those

12 boards meet frequently, they have independent counsel, and

13 they take separate actions, including very recently where they

14 did not do something that was advised and acted independently.

15 And the third thing that makes this case different and

16 that all of us should bear in mind is that we're talking today

17 about other people's money. There's more than one billion

18 dollars of investment funds, retirement funds, pension funds,

19 firefighter funds, school funds, wealthy individuals, having

20 nothing in the world to do with Mr. Dondero or anyone in this

21 case.

22 So what we're talking about here today, Your Honor, is

23 that if my retirement manager files bankruptcy, that I for all

24 time would be effectively enjoined from removing him, no

25 matter what he may do in the future, just because he needs

1 that revenue.

2 That is an absolutely inappropriate use of a preliminary
3 injunction. It is the modification of a contract that the
4 Debtor seeks to assume, and there is going to be no evidence
5 on the underlying elements that the Court must consider.

6 I say that, Your Honor, because I'm new to -- I'm late to
7 this case but I have studied in detail what Your Honor did in
8 the *Acis* case. And I think that we have to qualitatively
9 differentiate today from *Acis*. In *Acis*, there were
10 allegations of fraudulent transfer. When Your Honor enjoined
11 future actions, I believe in part it was because the
12 legitimate owner of those rights might not have been having
13 those rights.

14 So that was a very important difference. Here, there's no
15 question that we have more than billion dollars of other
16 people's funds at issue.

17 Also in *Acis*, as confirmed by the District Court, there
18 was the exercise of an optional redemption right, which could
19 have very well been used as a weapon to strip the manager of
20 its rights. That's not the case here today. We are talking
21 about removing the Debtor in the future -- not today, not
22 prior to assumption, in the future -- for such things as if
23 the Debtor commits fraud, if Mr. Seery is indicted for
24 felonies, if the Debtor absconds with our funds. We are
25 talking about potential hypothetical actions in the future

1 that are not even ripe based on the Debtor's potential
2 wrongful actions, not based anything on our motivations or our
3 intentions.

4 So this is a different case than Your Honor has heard so
5 far in these cases. And what it boils down to, Your Honor, is
6 will the Court give judicial immunity to the post-assumption,
7 post-confirmation Debtor over the next two or three years as
8 it manages and liquidates more than a billion dollars of other
9 people's funds? It is their money at issue.

10 So, in order to do this, the Debtor first has to tell Your
11 Honor that it has a likelihood of merits on the success [sic]
12 of some claim. The Debtor cannot just come to you -- because
13 the Debtor knows Your Honor's opinion on 105(a) and the
14 Supreme Court law -- and the Debtor cannot just say, Judge,
15 please give us an injunction because it's convenient or
16 because we don't want to comply with our obligations. So they
17 concoct a tortious interference claim. They argue that there
18 is an automatic stay violation, which, as Your Honor knows,
19 all of us bankruptcy lawyers take most seriously. And they
20 argue that, well, whatever Mr. Dondero has been enjoined from
21 doing, somehow we *a priori* are also enjoined. Basically, an
22 alter ego with no facts, law, trial, or due process.

23 On the tortious interference, Your Honor will hear
24 absolute evidence that cannot be refuted that all that we did,
25 all that we did was we refused, our employees refused to make

1 a ministerial entry into a computer program of two trades that
2 Mr. Seery authorized. Those trades closed exactly as Mr.
3 Seery wanted. Those trades closed, were executed, before Mr.
4 Seery asked our employees to do his bidding. And the reason
5 why our employees were instructed not to do what Mr. Seery
6 wanted was because our chief compliance officer looked at it,
7 those employees looked at it, and they all said, What is this?
8 Our internal protocols were not followed. We don't know
9 anything about these trades. We have fiduciary duties, we
10 have SEC obligations, and Mr. Seery has his own employees whom
11 he can instruct to enter these two trades into the computer
12 and our employees aren't going to do it. It's as simple as
13 that.

14 Mr. Dondero did not command that decision. Mr. Dondero
15 did not instruct that decision.

16 Our employees not doing what Mr. Seery requested of them
17 is not tortious interference. It is not interference as a
18 matter of law. There was no breach of contract as a result.

19 So the two elements -- two of the elements required for
20 tortious interference, there will be zero evidence on. But in
21 the bigger picture, what they're talking about again is
22 restraining our rights in the future. And whether -- whether
23 we are party to these contracts or a third-party beneficiary,
24 it doesn't matter, because we are not a stranger to these
25 contracts. These contracts expressly give us rights. And a

1 party exercising their right under a contract, it could be
2 breaching that contract, but it cannot be tortious
3 interference as a matter of law.

4 And if Your Honor is concerned about us tortiously
5 interfering in the future, then the Court should enjoin us
6 from tortious interference in the future, not excise from the
7 contract the remedies that the Debtor must accept if it wants
8 to assume these contracts.

9 Moving to the automatic stay issue, the sole and exclusive
10 argument for why we violated the stay is because our counsel,
11 a seasoned, gentlemanly bankruptcy lawyer of many years'
12 experience, sent two letters to seasoned veteran bankruptcy
13 lawyers for the Debtor. Communications. Communications
14 amongst counsel.

15 The first, the December 22nd letter, is a request: Okay,
16 we lost in front of Judge Jernigan, Judge Jernigan called our
17 motion frivolous, we get that, but we ask you to please stop
18 trading until the plan is confirmed. A request which the
19 Debtor ignored. Or that's not true, didn't ignore: refused
20 to comply with.

21 The second letter, a day later, after various
22 communications, was: Okay, we are going to initiate the
23 process of terminating you as the servicer.

24 Mr. Dondero had nothing in the world to do with these
25 letters. Mr. Dondero did not direct these letters. This was

1 professional advice from outside counsel and the independent
2 boards of the Advisors believing that their fiduciary duty
3 compelled that.

4 And guess what, that letter even said: subject to the
5 automatic stay. You heard from Mr. Morris that they basically
6 said, File your stay motion.

7 Our follow-up letter clarified anything that we might do
8 is subject to the automatic stay. We never said we're going
9 to act in a way that the stay doesn't permit. We said we're
10 going to come to this Court first.

11 But even all that, all those communications, while it may
12 be interesting, are irrelevant, because we never took any
13 action. You will hear that we never communicated with the
14 CLOs, the Trustees, or the Issuers, anything like we went over
15 with the Debtor, anything like, Please start the process of
16 removing the Debtor. We have done nothing of the sort, we
17 will do nothing of the sort, precisely because of the
18 automatic stay.

19 So I equate this, Your Honor, to your average home lender
20 whose lawyer sends a letter to the borrower saying, You don't
21 have insurance; we're going to start the process of
22 foreclosure. You're past due on your post-petition adequate
23 protection payments; we're going to start the foreclosure
24 process; we're going to go seek a list of stay. That is not
25 actionable. It is not a stay violation. Those are

1 communications, not actions. And that is precisely what
2 seasoned professional counsel should be doing.

3 And now, Your Honor, we move to the Mr. Dondero issue.
4 The argument is, well, on January the 9th, Mr. Dondero,
5 apparently for all time, in perpetuity, agreed that he will
6 not cause the related entities to terminate these agreements.
7 And then the argument is, well, the Court entered a TRO
8 against Mr. Dondero and the Court entered a preliminary
9 injunction against Mr. Dondero. Okay?

10 I don't see where the problem is. Mr. Dondero is
11 prohibited from causing us to terminate these agreements.
12 There are many ways, with independent boards, that Mr. Dondero
13 has nothing to do with that. And he will have nothing to do
14 with that in the future. So if the concern is enjoining us
15 because of an injunction against Mr. Dondero, enjoin Mr.
16 Dondero. Just like if the concern is that we're going to
17 tortiously interfere, you enjoin us from tortious
18 interference. Or if we're going to violate the stay, enjoin
19 us from violating the stay. But do not for all time assume
20 that any right that we may exercise in the future will
21 necessarily be tainted and the corrupt product of Mr.
22 Dondero's instructions. You will see today on the evidence
23 that that has not happened and it will not happen.

24 And whatever Mr. Dondero may have agreed to, we are
25 separate entities. Again, the Funds have -- are not

1 controlled or owned, and Mr. Dondero is not on the board. So
2 whatever he may have agreed to is between the Court and the
3 Debtor and him, but he never agreed to that on behalf of the
4 Funds. He never agreed to that on behalf of the Advisors, who
5 have their own independent fiduciary duties and duties under
6 the law.

7 So, Your Honor, there will be no substantial likelihood of
8 success on the merits. There will be no likelihood of success
9 on the merits. And I'm talking about the post-assumption,
10 post-confirmation time frame. The issue is fundamentally
11 different pre-assumption and pre-confirmation. But post-
12 assumption and post-confirmation, the Debtor will not show a
13 likelihood of success on the merits. The Debtor will not show
14 any irreparable injury. None.

15 Mr. Seery will testify that managing these agreements for
16 the coming couple or three years will have some value to the
17 Debtor. He doesn't know what the profitability of that is to
18 the Debtor. You will hear that, in fact, managing these
19 contracts for the next two years does not bring any
20 profitability to the Debtor. The Debtor will lose money
21 managing of them. But whatever damages there are are monetary
22 damages, and monetary damages are not an irreparable injury as
23 a matter of law.

24 Now, the Debtor says, well, the Court can enter an
25 injunction in the aid of restructuring, but this injunction

1 will happen after restructuring.

2 On the balance of harm and public interest, Your Honor, I
3 think we're dealing with more than a billion dollars of clean,
4 innocent third-party funds. The balance of harm here weighs
5 against granting this injunction. If we try to do anything in
6 the post-confirmation world, the Debtor has all of its rights
7 and remedies to contest what we do. If we do it wrong, we're
8 liable in contract or in tort, there's monetary damages, and
9 the Debtor has already successfully organized.

10 But if the Debtor does something wrong in the future and
11 we cannot take action to stop a gross mismanagement or a
12 denution [sic] of the Debtor or an abscondence with funds,
13 then think about the harm to the innocent investors here.
14 Because if we even go to court, your Court, any court, we will
15 be in violation of a federal court injunction.

16 Your Honor, this is not the appropriate purpose of an
17 injunction for the preservation of the status quo. The status
18 quo, by definition, cannot extend post-assumption or post-
19 confirmation. This is not a proper exercise of equity. We
20 have done nothing wrong, we have threatened to do nothing
21 wrong, and we will do nothing wrong to justify forever being
22 prejudiced and enjoined from exercising our contractual and
23 statutory rights.

24 Your Honor, this TRO extends through February the 15th.
25 We asked the Debtor to continue this hearing. We asked the

1 Debtor to go to our independent boards and seek approval of
2 the same settlement that the Debtor has with CLO Holdco, which
3 we learned about last night. We simply haven't had the time
4 to get those boards aligned up and present a settlement to
5 them. We're trying to put together a competing plan.

6 Your Honor, there is no reason to go forward today except,
7 like Mr. Morris said, power. Power. Mr. Seery's power, Your
8 Honor. Not ours. Mr. Seery's power in perpetuity or for
9 judicial immunity, get out of jail free card. Thank you.

10 THE COURT: All right. Mr. Morris, you may call your
11 witness.

12 MR. MORRIS: Yeah. I just want to make a motion to
13 strike the notion of a get out of jail free card. I
14 appreciated everything counsel had to say, but I think that's
15 a little -- a little over the top.

16 We call Mr. James Dondero, please.

17 THE COURT: Mr. Dondero, --

18 MR. RUKAVINA: Your Honor, bear with me.

19 THE COURT: Okay.

20 MR. RUKAVINA: Your Honor, bear with me. I'm going
21 to get out of this chair. Mr. Dondero will get in this chair.
22 And so that there's no reverberation, I will be sitting next
23 to Mr. Dondero in case I have to make any objections.

24 THE COURT: Okay. All right. Good morning, Mr.
25 Dondero.

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1 MR. DONDERO: Good morning.

2 THE COURT: Please raise your right hand.

3 JAMES DONDERO, DEBTOR'S WITNESS, SWORN

4 THE COURT: Thank you. Mr. Morris, go ahead.

5 MR. MORRIS: May I proceed, Your Honor?

6 THE COURT: Yes.

7 DIRECT EXAMINATION

8 BY MR. MORRIS:

9 Q Good morning, Mr. Dondero. Okay. John Morris; Pachulski,
10 Stang, Ziehl & Jones; for the Debtor. Can you hear me okay,
11 sir?

12 A Yes.

13 Q There are no board members here on behalf of any of the
14 Funds to testify or offer any evidence; isn't that right?

15 A Not that I'm aware of.

16 Q Okay. And you knew the hearing was going to be today on
17 the preliminary injunction, right?

18 A Yes.

19 Q And you had an opportunity to confer with the boards of
20 the Funds in advance of this hearing, right?

21 A No.

22 Q There's no -- there's no -- no board member is expected to
23 testify, fair?

24 A Correct.

25 Q So the Court isn't going to hear any evidence as to the

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1 board's perception of what's happening here, right?

2 A Not that I'm aware of.

3 Q Okay. Until January 9th, 2020, you controlled the debtor
4 Highland Capital Management, LP; isn't that right?

5 A I don't remember exactly when these -- when the
6 independent board was put in place, but up until around that
7 time, I believe.

8 Q Okay. So, January 2020?

9 A Yes.

10 Q And during that month, you completed an agreement with the
11 Creditors' Committee where you ceded control of the Debtor
12 pursuant to a court order, right?

13 A Pursuant to a court ...? I thought it was pursuant to a
14 negotiation where they would have fiduciary responsibility to
15 the estate in my absence. That's -- that's what I think the
16 (garbled).

17 Q Okay. You're aware -- so you entered into an agreement
18 with the Creditors' Committee pursuant to which you ceded
19 control of the Debtor, right?

20 MR. RUKAVINA: Your Honor, I'll object. That
21 agreement speaks for itself. And if Mr. Morris wants to
22 present it to Mr. Dondero, he can.

23 THE COURT: Um, --

24 MR. MORRIS: Sure. Ms. Canty, can we please put up

25 --

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1 THE COURT: All right. Well, I --

2 MR. MORRIS: I'm happy to put it up, Your Honor.

3 THE COURT: I overrule that objection. You can ask.
4 And then if he's not sure, you can present the agreement. All
5 right? Go ahead.

6 MR. MORRIS: Okay.

7 BY MR. MORRIS:

8 Q Mr. Dondero, is there any doubt in your mind that in
9 January of 2020 you gave up control of Highland in favor of an
10 independent board at the Strand Advisors level?

11 A No. I -- yes, I agree with that.

12 Q Okay. And do you recall that, in connection with that
13 agreement, the Court entered an order?

14 A Several orders. Which one?

15 Q Okay.

16 MR. MORRIS: Can we please put up Docket No. 339?

17 MS. CANTY: Sure, just one second.

18 MR. RUKAVINA: And you have it here.

19 John, I have the order if just want Mr. Dondero to review
20 it.

21 MR. MORRIS: I think -- I think everybody should have
22 the benefit of seeing it. But thank you very much.

23 Your Honor, while we take this moment, can you just remind
24 me of when the Court needs to take a break today, so that I'm
25 mindful of that and respectful of your time?

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1 THE COURT: 11:30.

2 MR. MORRIS: Okay. And what time will we reconvene?

3 THE COURT: Well, I have said 1:00. I hope it can be
4 a little sooner, but let's just plan on 1:00, okay, so there's
5 no confusion.

6 MR. MORRIS: Okay. All right. All right. So, on
7 the screen here, we have Exhibit OOOO, which is in the record.
8 BY MR. MORRIS:

9 Q This is an order that was entered by the Court on January
10 9th, 2020. Do you see that, sir?

11 A Yes.

12 MR. MORRIS: Can we scroll down to Paragraph 9,
13 please? (Pause.) Are you having problems, Ms. Canty?

14 MS. CANTY: It's on the screen. You can't see it?

15 MR. MORRIS: Yeah. Can you scroll down to Paragraph
16 9?

17 MS. CANTY: It's on Paragraph --

18 MR. MORRIS: That's on Page 2, I believe.

19 MS. CANTY: Yeah, I have it up. I'm not sure what
20 the disconnect is, because I can see it on my screen. I'm
21 going to stop it and reshare it.

22 MR. MORRIS: Thank you very much.

23 (Pause.)

24 MS. CANTY: Do you see it now?

25 MR. MORRIS: Okay. Beautiful.

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1 BY MR. MORRIS:

2 Q Mr. Dondero, if you'd just read Paragraph 9 out loud.

3 A (reading) Mr. Dondero shall not cause any related entity
4 to terminate any agreements with the Debtor.

5 Q Okay. So you understood, as part of the corporate
6 governance settlement pursuant to which you avoided the
7 imposition of a trustee, that you agreed that you wouldn't
8 cause any related entity to terminate any agreements with the
9 Debtor, right?

10 A Uh, --

11 Q Is that correct? You understood that paragraph?

12 A Yes.

13 Q Okay. And you didn't appeal this particular order, did
14 you, sir?

15 A I -- I believe I've refuted -- I've adhered to that order
16 entirely.

17 Q Okay. NexPoint Advisors LP, is one of the defendants in
18 this matter, right?

19 A Yes.

20 (Pause.)

21 Q Can you hear me, sir?

22 A Yes. Yes, I said, "Yes."

23 MR. NICHOLSON: Well, John, did you -- did you ask a
24 question? Because you went offline for a few seconds there.

25 MR. MORRIS: I asked whether NexPoint Advisors, LP

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1 was an advisory firm.

2 THE WITNESS: Yes.

3 BY MR. MORRIS:

4 Q And you have a direct or indirect ownership interest in
5 NexPoint Advisors, LP, correct?

6 A Yes.

7 Q And you understand that, based on that direct or indirect
8 ownership interest, NexPoint Advisors, LP is a related entity
9 under Paragraph 9 of this order, right?

10 A Yes.

11 Q Okay. Highland Capital Management Fund Advisors, LP is
12 one of the other defendants in this case, right?

13 A Yes.

14 Q And we'll refer to that entity as Fund Advisors; is that
15 fair?

16 A Yes.

17 Q And we'll refer to Fund Advisors together with NexPoint
18 Advisors, LP as the Advisors; is that fair?

19 A Yes.

20 Q Okay. Fund Advisors is also an advisory firm; is that
21 (audio gap)?

22 A I missed that last question.

23 MR. RUKAVINA: John, you're freezing up on us. Is it
24 on our end, Your Honor, or is it on Mr. Morris's end?

25 MR. MORRIS: Just let me know -- just let me know

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1 when it happens.

2 THE COURT: Yes. I'm hearing him. But go ahead, Mr.
3 Morris. Let's try again.

4 MR. MORRIS: Okay.

5 BY MR. MORRIS:

6 Q You have a direct or indirect ownership interest in Fund
7 Advisors, correct, sir?

8 A Yes.

9 Q (audio garbled) And based on that direct or indirect
10 interest, you would agree that Fund Advisors is a related
11 entity for purposes of this order, correct?

12 A Yes.

13 Q In addition to your ownership interest, you're also the
14 president of Fund Advisors; is that (audio gap)?

15 THE COURT: All right. Now --

16 THE WITNESS: I believe so.

17 THE COURT: Yes. Now I'm starting to have some
18 trouble, Mr. Morris. Every once in a while, you're freezing
19 towards the end of a sentence. So I don't know what can be
20 done, but it's --

21 MR. MORRIS: All right. Let me know if that
22 continues.

23 THE COURT: Okay.

24 BY MR. MORRIS:

25 Q To use your words -- to use your words, Mr. Dondero, it's

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1 fair to say that you generally control Fund Advisors, right?

2 A Yes.

3 Q And based on that, you acknowledge that Fund Advisors is a
4 related entity under the Court's order, correct?

5 A Yes.

6 Q And together, the Advisors that you own and control manage
7 certain investment funds, correct?

8 A Yes.

9 Q And three of those funds are defendants in this case,
10 correct?

11 A Yes.

12 Q And you are the portfolio manager of each of those funds;
13 is that right?

14 A I believe so.

15 Q Okay. Let's talk about the events that led to this
16 matter. CLO stands for Collateralized Loan Obligations,
17 correct?

18 A I'm sorry. Repeat that, please?

19 Q Sure. CLO stands for Collateralized Loan Obligations,
20 correct?

21 A Yes.

22 Q Years ago, the Advisors that you own and control caused
23 the investment funds that they manage to buy the interests in
24 CLOs that are managed by the Debtor, correct?

25 A Yes. Yes.

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1 Q Okay. And those Funds still hold an equity interest
2 today, correct?

3 A Yes.

4 Q And K&L Gates is one of the law firms that represents the
5 Advisors and the Funds that are managed by the Advisors,
6 correct?

7 A Yes.

8 Q You would agree that the Debtor is party to certain
9 contracts that give it the right and the responsibility to
10 manage certain CLO assets, right?

11 A Yes.

12 Q And you recall that --

13 MR. RUKAVINA: Your Honor, Mr. Morris is frozen on
14 our end.

15 THE COURT: Yes. Mr. Morris, you just froze.

16 MR. RUKAVINA: We heard nothing, Mr. Morris.

17 THE COURT: Yes.

18 MR. MORRIS: Okay.

19 BY MR. MORRIS:

20 Q Sir, do you recall that you resigned from the Debtor on or
21 around October 10th, 2020?

22 A Yes.

23 Q Okay. And shortly thereafter, K&L Gates sent a couple of
24 letters to the Debtor on behalf of the Advisors and the Funds,
25 correct?

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1 A Yes.

2 Q Okay.

3 MR. MORRIS: Can we take a look at these? These are
4 documents that were admitted into evidence in a different
5 matter, but they're actually referred to in his prior
6 testimony, which is in evidence in this case. So I would just
7 ask Ms. Canty to go to Trial Exhibit B, which was filed in the
8 Adversary Proceeding 20-3190 at Docket 46. And for the
9 record, it's PDF Page #184 out of 270. I just want to take a
10 look at these two letters.

11 BY MR. MORRIS:

12 Q Okay. Do you see this letter, sir?

13 A Yes.

14 Q And NexPoint is one of the defendants here; is that right?

15 A Yes.

16 Q And that's one of the Advisors that you own and generally
17 control, correct?

18 A Yes.

19 Q And so this letter is sent less than a week after you've
20 left Highland Capital Management, right?

21 A Yes.

22 Q Do you recall this particular letter?

23 A No.

24 Q Can -- you're familiar with the substance of this letter
25 and the other one that was sent in November, correct?

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1 A Could you pull it a little higher and let me read it?

2 Q Yes. Sure.

3 MR. RUKAVINA: If this is an exhibit, I can show it
4 to him as an exhibit, Mr. Morris.

5 MR. MORRIS: I don't know that this is one of the
6 marked exhibits. It's one of the exhibits that's used within
7 his prior testimony. So, but I want to give Mr. Dondero a
8 chance to review it. And please let us know if you need to
9 scroll further down.

10 (Pause.)

11 MR. RUKAVINA: You're going to have to scroll down.

12 THE WITNESS: Scroll down a little further, please.

13 (Pause.)

14 MR. RUKAVINA: Mr. Morris, can you please scroll
15 down? Neither Mr. Dondero nor I can read the balance.

16 BY MR. MORRIS:

17 Q There you go. (Pause.) So, you see at the top of the
18 page there there is a reference to the sale of assets and a,
19 quote, "a rush to sell these assets at fire sale prices." Is
20 that what you think -- did you think that Mr. Seery was
21 selling (audio garbled) CLO assets at fire sale prices in
22 October 2020, --

23 MR. RUKAVINA: Your Honor, --

24 MR. MORRIS: -- less than a week after --

25 MR. RUKAVINA: Your Honor, I'll object. We did not

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1 hear Mr. Morris's question.

2 THE COURT: All right. Could you repeat the
3 question?

4 MR. MORRIS: Okay. Yes, Your Honor.

5 BY MR. MORRIS:

6 Q Mr. Dondero, on or about October 16th, did you personally
7 believe that Mr. Seery was in a rush to sell CLO assets at
8 fire sale prices?

9 A I believe he had no business purpose to sell any of the
10 assets, which I believe he stated that to Joe Sowin, our
11 trader. I -- I -- there was no business purpose stated or
12 ever given or obvious from the sales. And --

13 Q Okay.

14 A -- I (indecipherable) draft this letter.

15 Q Okay.

16 MR. MORRIS: I move to strike, Your Honor. It's a
17 very simple question --

18 THE COURT: Sustained.

19 MR. MORRIS: -- and it has to do solely with Mr.
20 Dondero's state of mind.

21 BY MR. MORRIS:

22 Q Mr. Dondero, on or about October 16th, did you personally
23 believe that Mr. Seery was in a rush to sell CLO assets at
24 fire sale prices?

25 A He was in a rush to sell them for some reason with no

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1 business purpose. I don't know the reason.

2 THE COURT: All right. Can you --

3 BY MR. MORRIS:

4 Q Okay. And you never asked him, right?

5 THE COURT: Yes. Yes or no answer, Mr. Dondero.

6 THE WITNESS: Never asked him.

7 MR. MORRIS: Okay. Can we turn to the next exhibit,
8 which is Exhibit C on that same docket?

9 (Pause.)

10 BY MR. MORRIS:

11 Q While we're waiting, can you just read the last sentence
12 of the paragraph that ends at the top of the page, Mr.
13 Dondero, beginning, "Accordingly"?

14 A (reading) Accordingly, we hereby request that no CLO
15 assets be sold without prior notice and prior consent from the
16 Advisors.

17 Q Are you aware of any contractual provision pursuant to
18 which the Funds or the Advisors can -- can expect that the
19 Debtor will refrain from any -- selling any assets without
20 giving prior notice and obtaining prior consent from those
21 entities?

22 A I think the documents have an overall good-faith/fair-
23 dealing clause which would cover something like this, I
24 believe.

25 Q Your -- is it your testimony, sir, that the duty of good

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1 faith and fair dealing requires the Debtor to give notice to
2 the Advisors and to obtain the Advisors' prior consent before
3 they can sell any CLO assets?

4 A Well, I think -- yes, I do. I think --

5 Q All right.

6 A Yes. Yeah.

7 Q Okay. And then the next month, another letter was sent by
8 NexPoint to Mr. Seery. Do you recall that?

9 A Not specifically. If you bring it up, we can talk about
10 it.

11 MR. MORRIS: Can we scroll down a little bit?

12 (Pause.)

13 MS. CANTY: John, are you talking to me? I was
14 frozen out. I just got back on. I apologize.

15 MR. MORRIS: That's okay. Can we just scroll down so
16 Mr. Dondero can see more of this particular letter?

17 MS. CANTY: Okay.

18 MR. MORRIS: Okay.

19 BY MR. MORRIS:

20 Q Can you just read out loud, Mr. Dondero, out loud the last
21 two sentences, please, beginning with, "We understand"?

22 A (reading) We understand that Charitable DAF Holdco, Ltd.
23 has made a similar request. Accordingly, we hereby re-urge
24 our request that no CLO assets be sold without prior notice to
25 and prior consent from the Advisors.

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1 Q What's the Charitable DAF Holdco, Ltd.?

2 A I think that's who you settled with yesterday.

3 Q Do you have an interest in that entity?

4 A No. It's a bona fide charity. It was one of the largest
5 in Dallas before it got cut in half by Acis.

6 Q Does -- are you familiar with the Get Good and the Dugaboy
7 Investment Trusts?

8 MR. RUKAVINA: Your Honor, at this time I would
9 object to relevance. I don't see what this has to do with
10 tortious interference and stay violation on December 22nd and
11 December 23rd, 2020.

12 THE COURT: Response?

13 MR. MORRIS: Your Honor, I'm trying to establish that
14 Charitable DAF Holdco, Ltd. is another entity in which Mr.
15 Dondero holds a beneficial interest.

16 THE COURT: Okay. Overrule the objection.

17 MR. RUKAVINA: John, you're not only frozen, now
18 you're off.

19 MR. MORRIS: Yeah, I can see myself. You can't hear
20 me?

21 MR. RUKAVINA: We can now, but Your Honor, we lost
22 Mr. Morris for a bit there.

23 THE COURT: All right. I think we were --

24 MR. MORRIS: Okay.

25 THE COURT: -- waiting on an answer from Mr. Dondero,

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1 actually.

2 THE WITNESS: We didn't hear the question at --

3 BY MR. MORRIS:

4 Q Sure. Are you familiar with the Get Good and Dugaboy
5 Investment Trusts?

6 A Yes.

7 Q Are you the beneficiary of those trusts?

8 MR. RUKAVINA: Your Honor, again, objection to
9 relevance. These are non-parties, and what his personal
10 interests are has no relevance to this.

11 THE COURT: Overruled.

12 THE WITNESS: The Get Good Trust, Get -- I believe
13 those are defective grantor trusts. I don't believe I have
14 any interest whatsoever in those. Dugaboy is a perpetual
15 Delaware trust. I don't know how that's set up, but I believe
16 I do have an interest there until I pass.

17 BY MR. MORRIS:

18 Q In fact, you're -- you're the sole beneficiary of the
19 Dugaboy Investment Trust, right?

20 A Until I pass. It's a -- it's a estate planning trust.

21 Q I appreciate that. And the Dugaboy and the Get Good
22 Trusts are the owners of the Charitable DAF Holdco Ltd.,
23 correct?

24 A No. Not as far as I know.

25 Q Okay.

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1 A (garbled) time at all.

2 Q All right. So we just looked at these two letters, sir.

3 And you were familiar with the substance of the letters before
4 they were sent, right?

5 A Uh, just --

6 MR. MORRIS: You can take it down, Ms. Canty.

7 THE WITNESS: Just generally. Again, I wasn't
8 involved directly with the letters.

9 BY MR. MORRIS:

10 Q You were aware of the letters before they were sent,
11 right?

12 A Yes.

13 Q And you discussed the substance of the letters with
14 NexPoint, correct?

15 A Not the substance of the letters, just the substance of
16 the issue.

17 Q You actually discussed the substance of the letters with
18 NexPoint, correct?

19 A I -- Again, I remember it being the substance of the
20 issue. Generally, at most, the substance of the letters.

21 Q And you discussed the substance of the letters with the
22 Advisors' internal counsel, too, right?

23 A The sub -- generally, the substance, yes, but more the
24 issue than the letter.

25 Q Okay. If I pull up your transcript from the TRO hearing,

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1 would that refresh your recollection that you discussed the
2 substance of these letters with NexPoint and with the
3 Advisors' internal counsel?

4 A I'd like to clarify with the testimony I just gave.

5 Q Okay. Would you -- do you have any reason to believe that
6 you did not previously testify that you discussed the
7 substance of the letters with NexPoint and with NexPoint
8 Advisors' internal counsel?

9 A I repeat the same testimony. Generally. Like, those
10 letters that you put on the screen, I have no recollection of
11 those specifically.

12 MR. MORRIS: Ms. Canty, can we please call up on the
13 screen Exhibit NNNN, which was the transcript from the January
14 8th, 2021 preliminary injunction hearing?

15 MR. RUKAVINA: Mr. Morris, just one sec. I'm trying
16 to find it on paper.

17 MR. MORRIS: Yeah. It's four Ns.

18 MR. RUKAVINA: One, two, three, four. (inaudible)
19 put that on the screen.

20 MS. CANTY: John, I'm not sure what's going on, but
21 it won't come up on the screen. I've tried three times. I'm
22 going to keep trying.

23 MR. MORRIS: All right. I have it in front of me.
24 Do you have it, too?

25 MR. RUKAVINA: Yes, the witness has it --

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1 MR. MORRIS: Okay.

2 MR. RUKAVINA: -- in front of him. This is NNNN,
3 just to confirm?

4 MR. MORRIS: Yes. And it is the January 8th
5 transcript.

6 BY MR. MORRIS:

7 Q Mr. Dondero, were you asked these questions and did you
8 give these answers? Question: Are you familiar with --

9 MR. RUKAVINA: Where are you, John? Where are you?
10 Where are you? We -- we -- we --

11 MR. MORRIS: I apologize. Page 40. I'm going to
12 read Page 40, Lines 1 through 14.

13 MR. RUKAVINA: Okay. He has it in front of him, if
14 you just want him to read it.

15 BY MR. MORRIS:

16 Q Did you give these answers at Page 40, beginning Line 1:
17 "Q And were you -- and you were familiar, you were
18 aware of these letters before they were sent; is that
19 correct?

20 "A Yes.

21 "Q And you generally discussed the substance of these
22 letters with NexPoint; is that right?

23 "A Generally, yes.

24 "Q You discussed the letters with the internal
25 counsel; is that right?

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1 "A Yes.

2 "Q That's D.C. Sauter?

3 "A Yes.

4 "Q And you have been on some calls with K&L Gates
5 about these letters, right?

6 "A I believe so.

7 "Q And you knew these letters were being sent,
8 correct?

9 "A Yeah. They're -- they're reported.

10 Q Did you give those answers to those questions at the prior
11 hearing?

12 A I -- I believe it's what I -- it's almost exactly what I
13 just said, but yes.

14 Q And you supported the sending of the letters; isn't that
15 right?

16 A Absolutely.

17 Q And you encouraged the sending of the letters, right?

18 A Absolutely.

19 Q Around Thanksgiving, you learned that Mr. Seery had given
20 a direction to sell certain securities owned by CLOs managed
21 by the Debtor, correct?

22 A Yes.

23 Q And when you learned that, you personally intervened to
24 stop the trades, correct?

25 A Yes.

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1 Q Let's -- I want to look at that email string that we
2 looked at once before. It can be found at Trial Exhibit D
3 found on Docket No. 46 in the adversary proceeding. It's PDF
4 Number -- it's PDF Page 189 of two (garbled).

5 MR. RUKAVINA: Did you catch that?

6 THE COURT: Which -- which exhibit number -- letter
7 is it?

8 MR. MORRIS: It's on the docket in the Adversary
9 Proceeding 20-3190. And in that adversary proceeding, at
10 Docket No. 46, you've got the Debtor's exhibit list. And
11 Exhibit D, which can be found at PDF Page 189 of 270, is the
12 email string I'm looking for.

13 I apologize, Your Honor. It wasn't until I was reading
14 the transcript yesterday that I realized I needed these
15 documents. But they are in the record. Obviously, they're
16 referred to in the transcript that is in the record.

17 THE COURT: Okay.

18 MR. RUKAVINA: Your Honor, I would like to interject
19 for the record here that this is the first time my clients
20 have been sued. They have a right to be confronted with the
21 witnesses and testimony and evidence against them. So if Mr.
22 Morris wants to introduce this as an exhibit here today,
23 that's one thing, but I object to any notion that there's a
24 prior record that is going to tie my clients' hands. It might
25 tie Mr. Dondero's hands, but not my clients' hands.

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1 MR. MORRIS: I'd move for the introduction into
2 evidence of this document that has emails not only from Mr.
3 Dondero, but from Joe Sowin, the head trader of the
4 Defendants.

5 MR. RUKAVINA: And Your Honor, I have no problem with
6 that admission. I just want to make it clear that we're not
7 conceding that whatever happened in this case previous to this
8 is a part of today's record. That's all. So I do not have a
9 problem with the admission of this. I would, however, ask
10 you, Mr. Morris, to have someone email it to us so that I can
11 use it today if I need to.

12 THE COURT: All right.

13 MR. MORRIS: Okay. Will do.

14 THE COURT: So, I'll --

15 MR. MORRIS: We'll do that at the --

16 THE COURT: I'll admit it into evidence. You'll need
17 to not only email it Mr. Rukavina, but you'll need to file a
18 supplement to your exhibit and witness list after the hearing
19 showing the admission of --

20 MR. RUKAVINA: And Mr. Morris, if you could email it
21 to Mr. -- if you could email it to Mr. Vasek as well, because
22 obviously I can't get to it now. Thank you.

23 MR. MORRIS: Sure.

24 THE COURT: All right. So this --

25 MR. MORRIS: Okay. So, --

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1 THE COURT: For the record, let's just be clear what
2 the record is -- this is going to be called on the record. I
3 think you are up to SSSSS, so this would be TTTT when you
4 file it on the record. All right? Go ahead.

5 MR. MORRIS: Thank you very much, Your Honor.

6 (Debtor's Exhibit TTTT is received into evidence.)

7 BY MR. MORRIS:

8 Q Mr. Dondero, you recall looking at this email string at
9 the last hearing, right?

10 A Yes.

11 Q Let's start at the bottom, please, with Mr. Covitz's
12 email.

13 (Pause.)

14 MR. RUKAVINA: Hey, John, real quick, now we've lost
15 you. We've lost you and we're not seeing anything from your
16 assistant. Do you have the email, Mr. Vasek?

17 MR. MORRIS: I'm here. Can you hear me?

18 MS. CANTY: I'm here. (garbled) on the screen.

19 MR. MORRIS: Yeah. Can we scroll down to the bottom?

20 MS. CANTY: I did. I don't know why it's not showing
21 on you guys' screen.

22 MR. MORRIS: Hopefully this gets fixed. Yeah. We've
23 never had this problem before, Your Honor. I'm not sure what
24 the issue is, but I do apologize.

25 THE COURT: All right. Well, I can hear you, but we

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1 don't see movement of the exhibit.

2 MR. MORRIS: Yeah. When I began earlier today by
3 suggesting that this was going to be challenging, this was not
4 one of the challenges I anticipated.

5 THE COURT: Okay. All right.

6 MR. RUKAVINA: Do you have the email yet?

7 MS. CANTY: I'm sorry. I don't know what's happening
8 on this end. I have three streams of Internet going, and I
9 don't think it's the Internet. I don't know what's going on.

10 MR. MORRIS: Hmm.

11 MR. RUKAVINA: Yeah, John, what I'm suggesting is
12 that you have an associate email it to Mr. Vasek immediately
13 and then we can present it to Mr. Dondero.

14 MR. MORRIS: I'll tell you what. While that -- one
15 more try.

16 MR. CANTY: Can you see it now?

17 MR. MORRIS: Okay. Yes.

18 BY MR. MORRIS:

19 Q All right. Mr. Dondero, Hunter Covitz is an employee of
20 the Debtor, right?

21 MR. RUKAVINA: Hold on a sec. Hold on a sec.

22 Your Honor, I believe that I have the right to see the
23 full email here. I believe that Mr. Dondero does. And we've
24 just seen the first little bit and now some middle piece.

25 THE COURT: All right. So are you saying --

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1 MR. MORRIS: And in the order that --

2 THE COURT: -- you want to see the whole string?

3 MR. RUKAVINA: Well, I think -- Mr. Dondero, do you
4 need to see the whole string? I don't know what this is, but
5 maybe you do.

6 MR. DONDERO: It depends on what the question is. I
7 can answer some questions off of this email.

8 THE COURT: Okay, let's go.

9 MR. MORRIS: Yeah.

10 BY MR. MORRIS:

11 Q All right. So, for the moment, Mr. Covitz is an employee
12 of the Debtor, correct?

13 A Yes.

14 Q And he's the author of this email in front of us, correct?

15 A Yes.

16 Q And Mr. Covitz helps to manage the CLO assets on behalf of
17 the Debtor, correct?

18 A Yes.

19 Q Mr. Covitz is giving directions to Matt Pearson and Joe
20 Sowin to sell certain securities held by the CLOs, correct?

21 A Yes.

22 Q And if we can scroll up, I think we can see that you
23 received a copy of this email?

24 (Pause, 11:15 a.m.)

25 MR. MORRIS: What I would like to do instead, we'll

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1 take a break in about 15 or 20 (audio gap). When we
2 disconnect, we'll get a better connection after the break.
3 And in the interim, I've got testimony that I would like
4 that's already been admitted into the record but there's
5 portions of which I would like to read into the record from
6 Dustin Norris, who is the executive vice president for each of
7 the Defendants. And maybe it would be easiest for me to do
8 that.

9 THE COURT: Okay.

10 MR. MORRIS: All right. On Docket No. 39.

11 MR. RUKAVINA: Your Honor, I apologize. Your Honor,
12 I apologize. We did not hear --

13 MR. MORRIS: I'm going to read into the record a
14 portion of Mr. Norris' testimony from the December 16th
15 hearing.

16 MR. RUKAVINA: Your Honor, I do not see that
17 transcript in the exhibits. If Mr. Morris could give me an
18 exhibit.

19 MR. MORRIS: Exhibit B as in boy.

20 MR. RUKAVINA: Thank you.

21 MR. MORRIS: All right. Instead of putting it on the
22 screen, if we could take the exhibit down, Ms. Canty. He can
23 just follow along. Beginning at Page 38, Line 7 through -- 7
24 through 17.

25 Are you there, Mr. Rukavina?

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1 MR. RUKAVINA: I am. Thank you. I have it in front
2 of Mr. Dondero.

3 MR. MORRIS: Okay. Page 38, Lines 7 through 17:

4 "Q I think you testified that you're one of the
5 executive vice presidents at NexPoint Advisors, one of
6 the Movants. Is that right?

7 "A That's right.

8 "Q Who is the president of NexPoint Advisors, LP?

9 "A Mr. Dondero.

10 "Q And you report directly to him; is that right?

11 "A I do.

12 "Q You're also the executive vice president of Fund
13 Advisors, another Movant; is that right?

14 "A Correct."

15 MR. MORRIS: Beginning on Page 38, Line 25:

16 "Q You're also the executive vice president (audio
17 gap) that are managed by the Advisors here, right?

18 "A Yes. That is correct."

19 MR. MORRIS: Then going back to Page 35, beginning at
20 Line 15:

21 "Q To be clear here, there are five moving parties;
22 is that right?

23 "A That's correct. The two Advisors and the three
24 Funds.

25 "Q And one of the advisory firms is Highland Capital

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1 Management Fund Advisors, LP; is that right?

2 "A That's correct.

3 "Q And I'll refer to that as Fund Advisors; is that
4 okay?

5 "A That's great.

6 "Q James Dondero and Mark Okada are the beneficial
7 owners of Fund Advisors, correct?

8 "A That is my understanding.

9 "Q And your understanding is that Mr. Dondero
10 controls Fund Advisors, correct?

11 "A That's correct.

12 "Q And the other advisory firm that brought the
13 motion is NexPoint Advisors, LP; is that right?

14 "A That is correct.

15 "Q And Mr. Dondero is the beneficial owner of
16 NexPoint; is that right?

17 "A A family trust where Jim is the sole beneficiary,
18 I believe, controls or owns NexPoint Advisors.

19 "Q Okay. And Mr. Dondero --

20 "A Or 99 percent of NexPoint Advisors.

21 "Q Mr. Dondero controls NexPoint; is that right?

22 "A Correct."

23 MR. MORRIS: Continuing at Line 16 on Page 36:

24 "Q All right. And I'm going to refer to Fund
25 Advisors and NexPoint as the Advisors going forward; is

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1 that fair?

2 "A That's fair.

3 "Q Each of the Advisors manages certain funds; is
4 that right?

5 "A That is correct.

6 "Q And three of those funds that are managed by the
7 Advisors are Movants on this motion, correct?

8 "A Correct.

9 "Q All right. The Advisors caused these three Funds
10 to invest in CLOs that are managed by the Debtor; is
11 that right?"

12 "A --"

13 MR. RUKAVINA: Your Honor, I object. Is there a
14 question at the end of this? I mean, Mr. Dondero can't
15 possibly remember all this and then be asked a question.

16 MR. MORRIS: He doesn't have to answer any questions.
17 I'm just reading the evidence into the record.

18 THE COURT: Okay.

19 MR. RUKAVINA: Your Honor?

20 MR. MORRIS: Since we're having difficulty --

21 MR. RUKAVINA: Your Honor, that's a matter for
22 summation. That's -- this is a question and answer, I submit.

23 THE COURT: Well, I overrule.

24 MR. MORRIS: Your Honor, here's -- here's --

25 THE COURT: This has been admitted into --

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1 MR. MORRIS: Yeah.

2 THE COURT: -- evidence. And if he wants to
3 highlight to the Court portions of the evidence, he can.

4 Go ahead.

5 MR. MORRIS: Thank you, Your Honor.

6 "A The portfolio managers working for the Advisors
7 did. That's correct.

8 "Q And Mr. Dondero is the portfolio manager of the
9 Highland Income Fund; is that right?

10 "A He is one of the portfolio managers for that Fund.

11 "Q And he's also --

12 "A I believe there are two.

13 "Q And he's also a portfolio manager of NexPoint
14 Capital, Inc., one of the Movants here, right?

15 "A That is correct.

16 "Q And he's also the portfolio manager of NexPoint
17 Strategic Opportunities Fund, another Movant; is that
18 right?

19 "A Yes. That is correct."

20 MR. MORRIS: Going to Line -- Page 41, Lines 6
21 through 9:

22 "Q The whole idea for this motion initiated with Mr.
23 Dondero; isn't that right?

24 "A The concern, yes, the concern originated, and his
25 concern was voiced to our legal and compliance team."

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1 MR. MORRIS: Page 42, Lines 4 through 11:

2 "Q None of the Movants are parties to the agreements
3 between the Debtor and each of the Debtors pursuant --
4 each of the CLOs pursuant to which the Debtor serves as
5 portfolio manager; is that correct?

6 "A I believe that is correct. One, I think,
7 important -- even though they're not (audio gap), they
8 are the -- they have the economic ownership of each of
9 these CLOs.

10 "Q But they're not party to the agreement; is that
11 right?

12 "A Not that I am aware of."

13 MR. MORRIS: Page 42, Line 25:

14 "Q Okay. It's your understanding, in fact, that
15 nobody other than the Debtor has the right or the
16 authority to buy and sell assets on behalf of the CLOs
17 listed on Exhibit B, correct?

18 "A That is my understanding.

19 "Q Okay. And it's also your understanding, your
20 specific understanding, that holders of preferred
21 shares do not make investment decisions on behalf of
22 the CLO; is that right?

23 "A (audio gap)

24 "Q And that's something the Advisors knew when they
25 decided to invest in the CLOs on behalf of the Movant

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1 Funds; is that fair?

2 "A That's right. And at that time, the knowledge in
3 the purchase was with Highland Capital Management, LP
4 and the portfolio management team at the time.

5 "Q And it's still with Highland Capital Management,
6 LP; isn't that right?

7 "A That's correct. I'm not sure that the portfolio
8 management team looks the same, but it was HCMLP."

9 MR. MORRIS: Moving on to Page 46, Line 22:

10 "Q The only holders of preferred shares that are
11 pursuing this motion are the three Funds managed by the
12 Advisors, right?

13 "A In this motion, yes.

14 "Q You're not aware of any holder of preferred shares
15 pursuing this motion other than the three Funds managed
16 by the Advisors, correct?

17 "A No, I'm not aware of any others.

18 "Q You didn't personally inform any holder of
19 preferred shares, other than the Funds that are the
20 Movants, that this motion would be filed, did you?

21 "A No, I did not.

22 "Q You're not aware of any steps taken by either of
23 the Advisors to provide notice to holders of preferred
24 shares that this motion was going to be filed, are you?

25 "A I'm not, no.

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1 "Q And you're not aware of any attempt that was made
2 to obtain the consent of all of the noteholder -- of
3 all the holders of the preferred shares to seek the
4 relief that is sought in this motion, correct?

5 "A That's correct.

6 "Q You don't have any personal knowledge, personal
7 knowledge, as to whether any holder of preferred shares
8 other than the Funds managed by the Advisors wants the
9 relief sought in this motion, correct?

10 "A Correct.

11 "Q You don't have any personal knowledge as to
12 whether any of the CLOs that are subject to the
13 contracts that you described want the relief that's
14 being requested in this motion, right?

15 "A That's correct. I have not spoken or been
16 involved at all directly with the CLOs. I'm
17 representing the Funds."

18 MR. MORRIS: Moving to Page 49. I just have a bit
19 more, Your Honor. Page 49, Line 9. And this is the reference
20 to his declaration.

21 "Q And Paragraph 9 refers to a transaction involving
22 SSP Holdings, LLC; do I have that right?

23 "A That's correct.

24 "Q Do you know what SSP stands for?

25 "A See if we say it in there. SSP Holdings, LLC.

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1 "Q Right. Do you know what SSP stands for?

2 "A I don't. Something Steel Products. I --

3 "Q Okay. You don't need to guess. These are the
4 only two transactions that the Movants question; is
5 that right?

6 "A These transactions, as well as certain
7 transactions around Thanksgiving time.

8 "Q Okay. We'll talk about those. But those
9 transactions about -- around Thanksgiving time aren't
10 in your (audio gap)?

11 "A Not specifically mentioned by name.

12 "Q Okay. Let's talk about the two that are mentioned
13 by name, Trussway and SSP. The Movants do not contend
14 that either transaction was the product of fraudulent
15 conduct, do they?

16 "A No.

17 "Q The Movants do not contend that the Debtor
18 breached any agreement by effectuating these
19 transactions, do they?

20 "A I don't believe so.

21 "Q In fact, the Movants do not contend that the
22 Debtor violated any agreement at any time in the
23 management of the CLOs listed on Exhibit B; is that
24 right?

25 "A That's right.

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1 "Q The Movants don't even question the Debtor's
2 business judgment, only the results of the trans -- of
3 these two transactions. Is that right?

4 "A That's right. And the results is the key here,
5 and the approach."

6 MR. MORRIS: Moving on to Page 51, Line 8:

7 "Q Sir, you never asked the Debtor what factors it
8 considered in making these trades, right?

9 "A I did not.

10 "Q And you have no reason to believe that anyone on
11 behalf of the Movants ever asked the Debtor why it
12 executed these (audio gap), right?

13 "A I don't have any knowledge. There could have been
14 somebody from (audio gap) Movants. But I do not."

15 MR. MORRIS: Page 54, Line 19:

16 "Q Let's just talk briefly about the transactions
17 that occurred (garbled) Thanksgiving. They're not
18 specifically referred to in your declaration; is that
19 right?

20 "A That's correct.

21 "Q And you have no knowledge about any transaction
22 that Mr. Seery wanted to execute around Thanksgiving;
23 is that right?

24 "A I know there were transactions and there were
25 concerns from our management team, but I'm not aware of

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1 what those transactions were.

2 "Q In fact, you can't even identify the assets that
3 Mr. Seery wanted to sell around Thanksgiving, or at
4 least you couldn't at the time of your deposition
5 yesterday. Is that right?

6 "A That's correct.

7 "Q And you have no knowledge as to why Mr. Seery
8 wanted to make particular trades around Thanksgiving?

9 "A No, I don't.

10 "Q And in fact, you don't even know if the
11 transactions that Mr. Seery wanted to close around
12 Thanksgiving ever in fact closed. Is that fair?

13 "A Correct."

14 MR. MORRIS: Last one. Page 56, Line 1:

15 "Q Okay. To the best of your knowledge, does this
16 document accurately reflect the composition of the
17 boards of each of the three Movant Funds?

18 "A Yes, it does.

19 "Q Okay. John Honis, I think you mentioned him
20 earlier. He's on all three boards. Is that right?

21 "A Yeah, that's correct. And the reason we're --
22 we're being -- we have a unitary board structure, so --
23 which is very common in '40 Act Fund land, where the
24 board sits, for efficiency purposes, on multiple fund
25 boards, and there's a lot of economies of scale from an

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1 operating standpoint. So, yes, they sit on multiple
2 boards.

3 "Q Okay. And for purposes of the '40 Act, Mr. Honis
4 has been deemed to be an interested trustee. Is that
5 right?

6 "A That's correct.

7 "Q Okay. But you don't specifically know what (audio
8 gap) caused that designation; you only know that the
9 designation exists. Right?

10 "A That's right. And I know they are disclosed in
11 the proxy -- or, in the -- the relative filings related
12 to those Funds.

13 "Q Okay. Three other people are common to all three
14 Movant Funds. I think you've got Dr. Froehlich, Ethan
15 Powell, --

16 MR. MORRIS: I think he -- pronunciation.

17 "A Froehlich.

18 "Q Ethan Powell and Bryan Ward. Right?

19 "A That is correct.

20 "Q Okay. All three of those individuals actually
21 serve on the 11 or 12 boards that you mentioned earlier
22 that are managed by the Advisors, right?

23 "A That is correct.

24 "Q And they're the same Funds for which you serve as
25 the executive vice president, right?

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1 "A This is correct -- yes. That's correct.

2 "Q So, for all of the Funds that are managed by the
3 Advisors, you serve as executive vice president and all
4 four of these directors -- trustees serve as trustees
5 on the boards, right?

6 "A Yes, that's correct.

7 "Q Okay. In exchange for serving on all of these
8 boards, the three individuals -- Dr. Froehlich, Mr.
9 Ward, and Mr. Powell -- each receive \$150,000 a year
10 for services across the Highland complex; is that
11 right?

12 "A That's correct.

13 "Q Dr. Froehlich has been serving as a board member
14 across the Highland complex for seven or eight years
15 now; is that right?

16 "A That's correct.

17 "Q Mr. --

18 "A I believe it's about seven or eight years.

19 "Q Mr. Powell, he actually was employed by Highland
20 related -- Highland or related entities from about 2007
21 or 2008 until 2015, right?

22 "A That's correct.

23 "Q And Mr. Ward, the third of the independent
24 trustees, he's been serving on a board or various of --
25 on various Highland-related funds on a continuous basis

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1 since about 2004. Do I have that right?

2 "A Yeah, I believe that's correct."

3 MR. MORRIS: Your Honor, that concludes the reading
4 of the portions of Mr. Norris's testimony that I wanted to
5 present to the Court.

6 I know it's 11:30 now, and I would respectfully request
7 that we simply adjourn and let Your Honor tend to your
8 business.

9 THE COURT: Okay.

10 MR. MORRIS: And hopefully when we come back at 1:00
11 o'clock, we'll have a better connection.

12 THE COURT: All right. So, we are going to go into
13 recess until 1:00 o'clock Central. Mike, can people just stay
14 connected, or should they --

15 THE CLERK: Yes. They can stay. Yes.

16 THE COURT: You can stay or reconnect, whichever you
17 want. But we'll see you at 1:00.

18 MR. MORRIS: Thank you, Your Honor.

19 THE CLERK: All rise.

20 (A luncheon recess ensued from 11:33 a.m. until 1:37 p.m.)

21 THE CLERK: All rise. The United States Bankruptcy
22 Court for the Northern District of Texas, Dallas Division, is
23 now in session, the Honorable Stacey Jernigan presiding.

24 THE COURT: Good afternoon. Please be seated.
25 Apologies. I was a little ambitious in my time estimate. So,

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1 anyway, I didn't have any control over getting in and out of
2 Parkland Hospital, so I'm just grateful to be here.

3 All right. We were in the middle of direct examination of
4 Mr. Dondero. Mr. Morris, are you ready to proceed?

5 MR. MORRIS: I am, Your Honor, and I'm hopeful that
6 the computer issues have resolved themselves. It remains to
7 be seen once we try. If problems arise again, I plan on just
8 putting this on mute and dialing in through the telephone,
9 kind of the other alternative.

10 THE COURT: All right.

11 MR. MORRIS: So (garbled) and I apologize to Mr.
12 Dondero, too. I know I'm testing his patience. But it's not
13 for any reason other than technological.

14 THE COURT: All right.

15 MR. MORRIS: And Your Honor, you don't have to
16 apologize for keeping us waiting. That's okay.

17 THE COURT: Okay.

18 MR. MORRIS: But thank you.

19 THE COURT: All right. Mr. Dondero, --

20 MR. MORRIS: All right. So, --

21 THE WITNESS: Yeah.

22 THE COURT: I was just going to remind you, I have to
23 remind you you're still under oath.

24 Are you ready, Mr. Morris?

25 MR. MORRIS: I am, Your Honor.

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1 THE COURT: All right. You may proceed.

2 MR. MORRIS: And we're going to begin with the
3 document that we had difficulty scrolling through earlier,
4 which we have now sent to counsel, and that would be what was
5 marked as Exhibit D on Docket No. 46.

6 THE COURT: All right.

7 MR. MORRIS: That's the email string that we had seen
8 earlier that I think Your Honor admitted into evidence. Do I
9 have that right?

10 THE COURT: Yes.

11 MR. MORRIS: Okay.

12 DIRECT EXAMINATION, RESUMED

13 BY MR. MORRIS:

14 Q So, let's just start at the bottom and see if we can do
15 this more easily, Mr. Dondero. And again, I apologize for
16 keeping you waiting before. Starting at the bottom, that's an
17 email from Hunter Covitz. Do you see that?

18 A Yeah, I see it.

19 Q And he's an employee of the Debtor, right?

20 A Yes.

21 Q And your understanding is that Mr. Covitz actually helps
22 the Debtor manage the CLO assets, right?

23 A Yes.

24 Q And in this email, Mr. Covitz is giving directions to Matt
25 Pearson and Joe Sowin regarding certain securities held by the

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1 CLOs, right?

2 A Yes.

3 Q And if we could scroll up, hopefully, we can see that you
4 received a copy of this email.

5 MR. MORRIS: Yeah. Right there.

6 BY MR. MORRIS:

7 Q Do you see that?

8 A Yes.

9 Q And then -- and then you instructed the recipients of Mr.
10 Covitz's email not to sell the SKY securities as had been
11 instructed by Mr. Seery, correct?

12 A Yes.

13 Q And you understood when you gave that instruction that the
14 people on the email were trying to execute trades that Mr.
15 Seery had authorized, correct?

16 A Incorrect.

17 Q You didn't know that, sir?

18 A What I knew was that Seery had not authorized the trade,
19 he had orchestrated the trade. Hunter is not an analyst with
20 any particular knowledge. I called Hunter, why would he sell
21 those? And he said Seery told him to sell those. So it
22 wasn't that Seery authorized Hunter trading it. It was Seery
23 told Hunter to trade it, which is -- which is a material
24 difference in my mind.

25 Q Okay. So I'll ask you again. At the time you gave the

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1 instruction, "No, do not," you knew that you were stopping
2 trades that had been authorized and directed by Mr. Seery,
3 correct?

4 A Yes.

5 Q You didn't speak with Mr. Seery before sending this email,
6 did you?

7 A No.

8 Q And you took no steps to seek the Debtor's consent before
9 instructing the recipients of this email to stop executing the
10 SKY transactions. Is that right?

11 A I'm sorry. I missed the first part of that question.

12 Q Okay. You took no steps to seek the Debtor's consent
13 before instructing the recipients of this email to stop
14 executing the SKY transactions that were authorized by Mr.
15 Seery, correct?

16 A I don't -- I'm not sure I was permitted to talk to Seery
17 at this point, but I don't recall specifically, no.

18 Q You didn't seek consent, did you, before stopping these
19 trades?

20 A No.

21 Q Okay. In response to your instruction --

22 MR. MORRIS: If we could scroll up to the next
23 response.

24 BY MR. MORRIS:

25 Q You see the response from Mr. Pearson?

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1 A Yes.

2 Q And in response to your instructions, Mr. Pearson canceled
3 all of the SKY and AVYA sales that the Debtor had directed but
4 which had not yet been executed, right?

5 A Yes.

6 Q Okay.

7 MR. MORRIS: Can we scroll up to the next email,
8 please?

9 BY MR. MORRIS:

10 Q And you responded again, right? That's your response?

11 A Yes.

12 Q Can you read your response out loud, please?

13 A (reading) HFAM and DAF have instructed Highland in writing
14 not to sell any CLO underlying assets. There is potential
15 liability. Don't do it again, please.

16 Q And the writings that you refer to there are the two
17 letters that we looked at earlier, the October 16 and the
18 November 24 letter, right?

19 A I believe so. If not, if there's a third or fourth
20 letter, all the letters in aggregate.

21 Q All right. And you, you interpreted those letters not as
22 requests but, as you tell the recipients of your email here,
23 that they were actually instructions, right?

24 A That was -- that was my choice of words. I don't know if
25 I thought about it that clearly.

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1 Q Okay. But the reci... you have no reason to believe that
2 the recipient of this email wouldn't understand that you
3 believed that Highland had been instructed not to do these
4 trades, right?

5 A I'm sorry. Can you ask that again? I had no reason to
6 believe what?

7 Q That's okay. I'll move on. At this juncture, the
8 reference to potential liability was intended for Mr. Pearson,
9 right?

10 A Frankly, when you violate the Advisers Act, the CFO has
11 liability. I mean, I'm sorry, the chief compliance officer
12 has liability, and anybody who has an awareness that it
13 violates the Advisers Act has potential liability also.

14 Q And is it -- is it your testimony and your position that
15 Mr. Pearson had potential liability under the Advisers Act for
16 carrying out Mr. Seery's trade requests?

17 A Yes, once he was informed that the underlying investors
18 didn't want assets sold and Seery had stated he had no
19 business purpose in selling those assets.

20 MR. MORRIS: I move to strike the latter part of the
21 answer, Your Honor. Mr. Dondero has testified repeatedly
22 multiple times that he has never communicated with Mr. Seery
23 about why he wanted to make these transactions.

24 THE COURT: I grant that.

25 BY MR. MORRIS:

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1 Q Mr. Sowin responded and indicated that he would follow
2 your instructions, right, if we scroll to the next email?

3 A I'm sorry. What part are you saying, or what part are you
4 referring to?

5 Q Mr. Sowin. Who is Mr. Sowin?

6 A He's Matt Pearson's boss. He's the head trader.

7 Q And he works for the Advisors, right?

8 A Yes.

9 Q He's one of your employees, right?

10 A Yes.

11 Q Mr. Sowin followed your instructions as set forth in this
12 email, right?

13 A He did a bunch of things, but, yes, I believe -- yes,
14 that's a fair way to characterize.

15 Q And the only information that you know of that he's
16 relying upon to state that Compliance should never have
17 approved this order was your email that preceded it, right?

18 A No.

19 Q No? There's nothing else on this email other than your
20 email that preceded it, correct?

21 A Correct.

22 Q Okay. A few days later, you learned that Mr. Seery was
23 trying a workaround to effectuate the trades anyway, right?

24 A I believe so.

25 MR. MORRIS: Can we scroll up to the next email?

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1 BY MR. MORRIS:

2 Q This is your response to Mr. Surgent, right?

3 A Yes.

4 Q Now, Mr. Surgent hasn't written anything. He is not part
5 of this conversation, is he?

6 A No.

7 Q But you bring him into the conversation, right?

8 A Because he's the chief compliance officer at Highland,
9 yes.

10 Q He's not -- he's not the chief compliance officer for the
11 Advisors. He's the chief compliance officer for a company
12 that you no longer work for, right?

13 A Correct, but he has personal liability for violations of
14 the Advisers Act.

15 Q Okay. And you thought it was your responsibility to
16 remind him of that, right?

17 A It was my view of the situation, and at least he could
18 evaluate it himself if I reminded him of it, yes.

19 Q Uh-huh. What does it mean to do a workaround? What did
20 you mean by that?

21 A There's a concept in compliance called you can't do
22 something indirectly that you can't do directly, and that's
23 what I was referring to there.

24 Q Does that mean that he was trying to effectuate the trade
25 without the assistance of the Advisors?

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1 A I believed he was trying to do it without compliance and
2 without proper regard for investors, so that's why I described
3 it as a workaround.

4 MR. MORRIS: I move to strike.

5 THE COURT: Sustained.

6 BY MR. MORRIS:

7 Q I'm asking you a very specific question.

8 MR. MORRIS: Can I have a ruling, Your Honor? Thank
9 you.

10 THE COURT: Yes.

11 BY MR. MORRIS:

12 Q Did you, when you used the phrase workaround, did you mean
13 that he was trying to effectuate the trade without relying on
14 the Advisors' employees?

15 A No.

16 Q Okay. But you found out about the trade and you thought
17 it was a good idea to send Mr. Surgent this email, right?

18 A Yes.

19 Q Can you read the last line of your email?

20 A (reading) You might want to remind him and yourself that
21 the chief compliance officer has personal liability.

22 Q Personal liability for effectuating a trade that Mr. Seery
23 had authorized, correct?

24 A For violating the Advisers Act, is what I meant.

25 Q Uh-huh. Did you report anybody to the SEC?

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1 A I would be happy to if it's permitted by the Court.

2 Q But you didn't -- you never asked the Court to do that,
3 right?

4 A No.

5 Q It didn't seem important enough for you to take that step,
6 right? But you wanted -- you had to make sure that you told
7 Mr. Surgent that he might be personally liable, right? That
8 was what you needed to do?

9 A Could you repeat that question, please?

10 Q You needed to make sure that Mr. Surgent knew that you
11 were threatening him with personal liability if he followed
12 Mr. Seery's instructions, right?

13 A No.

14 Q As a factual matter, you never asked Mr. Seery why he
15 wanted to make these trades, right?

16 A I asked Joe Sowin to ask him.

17 Q As a factual matter, you never asked Mr. Seery why he
18 wanted to make these trades, correct?

19 A I believe I wasn't permitted to talk to him.

20 Q In November 2020? What would have prevented that?

21 A I believe Scott Ellington was the go-between at that
22 point in time.

23 Q Is it your testimony that you never spoke with Jim Seery
24 in November 2020?

25 A I believe in an unauthorized fashion, the day after

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1 Thanksgiving I talked to him, but that's the only day I can
2 remember.

3 Q Should we call up the email where you threatened him not
4 to do it again?

5 A That was an email.

6 Q Ah. So you could communicate by email? Did you ever send
7 Mr. Seery an email and say, Why do you want to do these
8 trades?

9 A No.

10 Q But somehow you thought you couldn't even speak to him?
11 You couldn't speak to him but you can send him emails? That's
12 the world that you live in, right? That's what you think?

13 A I have no comment on that.

14 Q All right. So, after this exchange, --

15 MR. MORRIS: And this is what I read out-of-order
16 before, Your Honor. We moved to the December 16th hearing.

17 BY MR. MORRIS:

18 Q And you remember, Mr. Dondero, that the Defendants made
19 that motion that asked the Court to stop the Debtor from
20 trading in the CLO assets? Do you remember that?

21 A I'm sorry. You're asking me do I remember letters were
22 sent? Yes.

23 Q No. Do you remember that there was a hearing in mid-
24 December?

25 A Yes.

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1 Q Okay.

2 MR. MORRIS: And Your Honor, for the record, Exhibit
3 A is the Debtor -- is the Defendants' motion. Exhibit B is
4 the transcript that we had looked at earlier or that I had
5 read portions of earlier.

6 THE COURT: Okay.

7 MR. MORRIS: And Exhibit C is the order that the
8 Court entered denying the Defendants' motion.

9 Can we call up Exhibit C, please?

10 BY MR. MORRIS:

11 Q All right. Do you see --

12 MR. MORRIS: If we could scroll to the very top,
13 please. All right.

14 BY MR. MORRIS:

15 Q Do you see this document is dated December 18th, sir?

16 A Yes.

17 Q And if we scroll down, this is the order denying the
18 motion of the Advisors and the Funds for an order trying to
19 temporarily restrict the Debtor's ability as portfolio manager
20 from initiating sales. Do you see that?

21 A Yes.

22 Q Okay. So, this is December 18th. And if you'll recall,
23 the TRO was issued against you on December 10th. Do you
24 remember that?

25 A I don't believe it was the 10th.

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1 Q Okay. It was in December, and it was just before this.
2 Is that fair?

3 A I believe there was an intent, and then the actual filing
4 I think was much later. I don't have -- I don't have the
5 knowledge. I don't have the knowledge of when the TRO was put
6 in place.

7 Q Okay. (Pause.) Okay. We talked earlier about how you
8 interfered with Mr. Seery's trading activities around
9 Thanksgiving. Do you remember that?

10 A Yes, I do. I do remember the trading then, also.

11 Q Okay. And do you remember that just before Christmas you
12 interfered with Mr. Seery's tradings again?

13 A Yes.

14 Q Okay.

15 MR. MORRIS: If we can call up Exhibit K from Docket
16 No. 46, which I have shared with counsel?

17 THE WITNESS: You know what?

18 BY MR. MORRIS:

19 Q Yeah.

20 A Let's handle these each incident one at a time. And I
21 don't want to use the word "interfering" or accept the word
22 "interfering" as an answer because I think my participation in
23 each situation was very different.

24 MR. MORRIS: All right. Can we scroll down?

25 BY MR. MORRIS:

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1 Q This is a letter that my firm wrote to Mr. Lynn. Mr. Lynn
2 is your lawyer. Is that right?

3 A Yes.

4 MR. MORRIS: And if we could start down at the first
5 page. We've seen these letter before. A little further.

6 BY MR. MORRIS:

7 Q Do you see there is a reference there to the Debtor's
8 management of CLOs?

9 A Yes.

10 Q And there is a recitation of the history that we talked
11 about a bit earlier. If we -- if we look further in that
12 paragraph to around Thanksgiving, when you intervened to block
13 the trades.

14 A Yes, I see that sentence.

15 Q Okay.

16 MR. MORRIS: And then if we can go to the next page,
17 the next paragraph. Yeah, that's where.

18 BY MR. MORRIS:

19 Q Then we referred to the December 16th hearing, right? And
20 then the next paragraph says, "On December 22, 2020" --

21 MR. MORRIS: Can you scroll down just a little bit?
22 Nope, the other way. Yeah, right there.

23 BY MR. MORRIS:

24 Q "On December 22, 2020, employees of NPA and HCMFA" --
25 those are the Advisors, right?

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1 A Yes.

2 Q -- "notified the Debtor that they would not settle the
3 CLO's sale of the AVYA and SKY security." Have I read that
4 correctly?

5 A Yes.

6 Q All right. On or about December 22nd, you personally
7 instructed employees of the Advisors not to trade the SKY and
8 AVYA securities that Mr. Seery had authorized. Is that right?

9 A No.

10 Q You personally instructed, on or about December 22, 2020,
11 employees of those Advisors to stop doing the trades that Mr.
12 Seery had authorized with respect to SKY and AVYA, right?

13 A No. You know, we need to look at source documents. My
14 recollection is I encouraged Compliance to look at those
15 trades. But I'm willing to be -- I'm willing to be -- get
16 source documents again, if you'd like.

17 Q All right. My source document is your prior testimony.

18 MR. MORRIS: Can we please call up Exhibit NNNN at
19 Page 73? Beginning at Line 2? Okay.

20 BY MR. MORRIS:

21 Q Page 73, beginning at Line 2, did you give the following
22 answer to my question?

23 "Q And you personally instructed, on or about
24 December 22nd, 2020, employees of those Advisors to
25 stop doing the trades that Mr. Seery had authorized

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1 with respect to SKY and AVYA, right?

2 "A Yeah. Maybe we're splitting hairs here, but I
3 instructed them not to trade them. I never gave
4 instructions not to settle the trades that occurred,
5 but that's a different ball of wax."

6 Q Did you give that answer, sir?

7 A I believe I confused dates or misspoke there, but I did
8 give that answer.

9 Q Okay. Thank you. Stated a different way, you personally
10 instructed the Advisors' employees not to execute the trades
11 that Mr. Seery had authorized but which had not yet been made,
12 right?

13 A No. Not -- not on December 22nd. That was in November.
14 November 22nd, I did not do that.

15 Q Okay.

16 MR. MORRIS: Can we go to Page 76, please? Line 15.

17 BY MR. MORRIS:

18 Q Did you give this answer to my question?

19 "Q And you would agree with me, would you not, that
20 you instructed the employees of the Advisors not to
21 execute the very trades that Mr. Seery identifies in
22 this email, correct?

23 "A Yes."

24 Q Did you give that answer, sir?

25 A Well, like I said, I -- I confused the Thanksgiving

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1 trades, the week of Thanksgiving, with my more nuanced
2 responses to later trades.

3 MR. MORRIS: I move to strike, Your Honor. It's a
4 very simple question.

5 THE COURT: Granted.

6 BY MR. MORRIS:

7 Q Did you give that answer to my question, sir?

8 A I -- yes, I did.

9 Q Thank you. Now, all of this is just a week after that
10 December 16th hearing, right?

11 A Yes.

12 Q And right after that hearing, the K&L Gates firm sent, on
13 behalf of the Defendants, more letters to the Debtors, right?

14 A Yes.

15 MR. MORRIS: Can we please pull up the first letter?
16 It's Exhibit DDDD. And if we can go not to our response but
17 to the original letter that was sent that's attached to this.
18 I think it is Exhibit A. Right there.

19 BY MR. MORRIS:

20 Q That's the first of the letters, December 22, 2020. Do
21 you see that?

22 A Yes.

23 MR. MORRIS: And can we scroll down to the end of the
24 letter to see what the request is here? Right there.

25 BY MR. MORRIS:

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1 Q Can you read the end of that letter right there, sir?

2 A (reading) Sincerely, A. Lee Hogewood, III.

3 Q Nice. I meant the actual substance.

4 A (reading) For the foregoing and other reasons, we request
5 that no further CLO transactions occur, at least until the
6 issues raised by and addressed in the Debtor's plan are
7 resolved at the confirmation hearing.

8 Q Okay. And that's similar in substance to the letter that
9 was sent on behalf of the Defendants on October 16th that you
10 saw and approved, right?

11 A I did not see and approve.

12 Q All right. The record will speak for itself. And it's
13 similar in substance to the letter that was sent on November
14 24th by the K&L Gates clients on behalf of the Defendants,
15 right?

16 A I don't know.

17 Q We looked at it before. Should we get it again?

18 A It's a -- all the letters, as far as I understand, were
19 similar in requesting that the -- the beneficial owners of the
20 CLOs were requesting that no wholesale liquidation of their
21 assets occur. That's how I understand it.

22 Q And that's --

23 A You asked my understanding. That's my understanding.

24 Q Okay. And notwithstanding the request in this letter,
25 when you were -- when you were talking to the traders at your

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1 shop, you actually told them that the Debtor was instructed
2 not to do these trades, right?

3 A Are you parsing "instructed" versus "requested"? I don't
4 understand the question.

5 Q I am, in fact. You used a very different phrase when
6 speaking to your employees than you did -- then your lawyers
7 did when they wrote to the Debtor, right?

8 A It seems to be a difference, yes.

9 Q Okay. So, this is on December 22nd. Now, the night
10 before, you participated in a meeting with Grant Scott and
11 with the lawyers for the Defendants, right, to talk about what
12 you guys were going to do with respect to the Debtor's
13 management of the CLOs. Isn't that right?

14 A I don't remember specifically.

15 Q Okay. But is it fair to say it's true, is it not, that
16 during the week leading up to Christmas you participated in
17 several phone calls with the K&L Gates firm and with other
18 members of the Defendants' -- the Advisors, Mr. Sowin or Mr.
19 Post or Mr. Sauter, and the lawyers, right? You were all
20 together talking about these issues during the week before
21 Christmas, right?

22 MR. RUKAVINA: Your Honor, I'm going to object. If
23 counsel is asking what was discussed with counsel present for
24 the purpose of legal advice, that is an inappropriate
25 question.

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1 THE COURT: Okay.

2 MR. MORRIS: I'm certainly not. I'm asking if the
3 conversations took place.

4 MR. RUKAVINA: And the conversations -- the question
5 was, did they discuss what to do with respect to the CLOs?
6 That would be privileged, Your Honor. If they discussed
7 football, that's not privileged, but what to do with the CLO
8 management agreements is privileged.

9 THE COURT: Okay. I sustain.

10 MR. MORRIS: Can we please call up Exhibit TT? I'm
11 sorry, TTT. Nope, TTTT. TTTT. Can you scroll down a bit?
12 Right there.

13 BY MR. MORRIS:

14 Q Do you see -- this is an email from Grant Scott to Scott
15 Ellington; do you see that?

16 A Yes.

17 Q And at this point, Mr. Ellington is still working for the
18 Debtor, right?

19 A Yes. I believe he was settlement counsel.

20 Q Uh-huh. And do you see that this is an email that refers
21 to your availability for a 9:00 a.m. call?

22 A Yes.

23 Q And do you see that there's a question as to whether the
24 K&L people can make it?

25 A Yes.

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1 Q And you understand that refers to K&L Gates, right?

2 A I -- I guess so.

3 Q And so does this refresh your recollection that at or
4 around Christmas, or in the days leading up to Christmas, you
5 participated in calls with Mr. Scott, with Scott Ellington,
6 and with the K&L Gates folks?

7 A I -- I don't know. I don't know if -- if I actually did
8 or not. But I was highly concerned with inappropriate
9 behavior.

10 Q And you were available -- and did you tell somebody that
11 you were available for this call on the morning of the 23rd?

12 A I don't know.

13 Q This is the day after you stopped the trades, right?

14 A Again, I didn't stop the trades on the 23rd.

15 Q You stopped them on the 22nd, right?

16 A No, I stopped them on the week of Thanksgiving.

17 MR. MORRIS: Can we go back to Exhibit NNNN, the
18 transcript? Page 73?

19 BY MR. MORRIS:

20 Q Let me see if I can refresh your recollection. Tab 2.
21 Did you give this answer to this question:

22 "Q And you personally instructed, on or about
23 December 22, 2020, employees of those Advisors to stop
24 doing the trades that Mr. Seery had authorized with
25 respect to SKY and AVYA, right?

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1 "A Yeah. Maybe we're splitting hairs here, but I
2 instructed them not to trade them."

3 Q Did you give that answer to the question?

4 A Yes.

5 Q Okay.

6 A But we -- we corrected.

7 Q All right. You didn't correct it at the preliminary
8 injunction hearing, did you?

9 A No, I did not.

10 Q Okay. So as far as the Court knows as of this moment,
11 that's the only testimony that you've ever given on the topic,
12 right?

13 A I'm trying to give some now.

14 Q Okay. And on December 22nd, that's the date that the
15 first letter was also sent, right, we just looked at?

16 A All right. Okay.

17 Q You agree with that, right?

18 A I don't remember the date on the letter. If you want to
19 pull it up, I'll say it is the 22nd or the 23rd, whatever it
20 says. I don't know.

21 Q Sure.

22 MR. MORRIS: Let's go back to DDDD, please. And if
23 we can just go to the top of the letter. Thank you.

24 BY MR. MORRIS:

25 Q K&L Gates. December 22nd. That's the letter, right?

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1 A Yes.

2 Q And according to the testimony that you gave at the
3 preliminary injunction hearing on January 8th, that's the day
4 that you also stopped AVYA and SKY trades, right?

5 A I'm not agreeing to that testimony. I am changing the
6 testimony.

7 Q Okay. And then we just saw that other exhibit where they
8 were trying to arrange a phone call with you, the K&L Gates
9 lawyers, and Mr. Ellington and Grant Scott for the 23rd. Do
10 you remember that one we just looked at?

11 A Yes.

12 Q And then later on the day on the 23rd, K&L Gates sends
13 another letter, right?

14 MR. MORRIS: Can we call up EEEE? And can we scroll
15 to the Exhibit A, to our response? Right there.

16 BY MR. MORRIS:

17 Q That's the 23rd. Do you see that letter?

18 A Yes.

19 Q Again, this is one week after the hearing, right?

20 A Yes.

21 Q Okay. And this is a letter where K&L Gates states on
22 behalf of the Defendants that they are contemplating taking
23 steps to terminate the CLO management agreements, right?

24 A I don't know. Can you scroll down, if you want to ask me

25 --

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1 Q Sure.

2 MR. MORRIS: Can we flip to the next page, please?

3 Keep going. Right there.

4 BY MR. MORRIS:

5 Q Can you read the first sentence of the paragraph
6 beginning, "Consequently"?

7 A (reading) Consequently, in addition to our request of
8 yesterday, where appropriate and consistent with the
9 underlying contractual provisions, one or more of the entities
10 above intend to notify the relevant Trustees and/or Issuers
11 that the process of removing the Debtor as fund manager should
12 be initiated, subject to and with due deference to the
13 applicable provisions of the United States Bankruptcy Code,
14 including the automatic stay of Section 362.

15 Q Okay. So, on December 23rd, the Defendants told the
16 Debtor that they intended to notify the relevant Trustees
17 and/or the Issuers that the process of removing the Debtor as
18 the fund manager should be initiated, right?

19 A That's what it says.

20 Q And then the K&L Gates firm sent yet another letter to the
21 Debtor, right? Do you remember that?

22 A No.

23 MR. MORRIS: Can we get up FFFF, please?

24 BY MR. MORRIS:

25 Q This is dated December 31st. Do you see that?

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1 A Yes.

2 MR. MORRIS: Can we scroll down a bit?

3 BY MR. MORRIS:

4 Q Do you recall this is the letter where they claim that
5 they've been damaged by the Debtor's eviction of you from the
6 Highland offices?

7 A I don't remember specifically, but that's true.

8 Q Okay. So we just saw these three letters, in addition to
9 your -- the -- at least the testimony you gave regarding your
10 conduct on the 22nd of December. You were aware that all of
11 these letters were being sent by K&L Gates, correct?

12 A Yes, generally.

13 Q And you were supportive of the sending of these letters,
14 right?

15 A Absolutely. They were appropriate.

16 Q And you pushed and encouraged the chief compliance officer
17 and the general counsel to send these letters, right?

18 A I'd like to think that they believed and they acted
19 largely on their own judgment, but I strongly believed it was
20 a violation of the Advisers Act, and stated that numerous
21 times.

22 Q Sir, you pushed and encouraged the chief compliance
23 officer and the general counsel to send these letters,
24 correct?

25 A No, I wouldn't use those words.

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1 Q Do you understand that the Debtor demanded that the K&L
2 Gates clients or the Defendants withdraw these letters?

3 A I believe they requested it. I didn't -- I didn't know
4 the former, what you mean by demand, but --

5 Q Well, it's fair to say you never instructed the K&L Gates
6 clients or the Defendants to withdraw these letters, right?

7 A No. I still believe they are appropriate and accurate. I
8 wouldn't withdraw them today.

9 Q Okay. Sir, throughout 2020, when you were still the
10 portfolio manager at Highland Capital Management, it's true
11 that you sold AVYA shares on numerous occasions on behalf of
12 both the CLOs and on behalf of the Funds outside of the
13 holdings of the CLOs?

14 A Always with a business purpose, yes. That is still a
15 small percentage of our total AVYA holdings, and we still
16 liked AVYA.

17 Q Sir, I'm going to ask you just one more time. In 2020,
18 you sold AVYA stock many times on behalf of the CLOs and on
19 behalf of the Funds?

20 A Yes.

21 Q Thank you.

22 MR. MORRIS: No further questions, Your Honor.

23 THE COURT: All right. Mr. Rukavina?

24 MR. RUKAVINA: Your Honor, I will reserve my
25 questions to my case in chief, and I would request a very

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1 short restroom break.

2 THE COURT: All right. Mr. Dondero, we're --

3 MR. RUKAVINA: And I do mean short. I will --

4 THE COURT: I'm sorry. What?

5 MR. RUKAVINA: And I do mean short, Your Honor. I

6 just need to run and be back -- I can be back in three

7 minutes.

8 MR. MORRIS: No problem, Your Honor.

9 THE COURT: Okay. You're finished for now, Mr.

10 Dondero, but you're going to be recalled, so hang tight.

11 Your next witness, Mr. Morris?

12 MR. MORRIS: The Debtor calls Jason Post.

13 MR. RUKAVINA: Your Honor, may I be excused to run to

14 the restroom and Mr. Vasek take over for a few minutes?

15 THE COURT: Oh. Okay. I'm sorry. If you made that

16 request, I didn't hear you. So that's fine.

17 All right. Mr. Post, --

18 MR. MORRIS: Your Honor, can we just -- I apologize

19 for interrupting. Can we just direct Mr. Dondero not to speak

20 with anybody about anything at any time? Not by phone, not by

21 text, not by email, not by meeting, not by anything? Because

22 he's still on the stand.

23 MR. RUKAVINA: Well, Your Honor, anything at any

24 time. I think I know that Mr. Morris is being facetious, but

25 if he's trying to get the rule invoked, that's different.

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1 MR. MORRIS: Okay. I'm trying to get the rule
2 invoked.

3 THE COURT: Okay. All right. I'm not going to make
4 that instruction. All right. So, --

5 MR. RUKAVINA: I've got to run to the restroom. I'll
6 be -- listen for the instructions.

7 THE COURT: Jason Post, you've been called to the
8 witness stand. Could you say, "Testing, one, two"?

9 MR. POST: (Indiscernible.)

10 THE COURT: All right. Please raise --

11 MR. POST: Testing, one, two.

12 THE COURT: Thank you. Please raise your right hand.

13 JASON POST, DEBTOR'S WITNESS, SWORN

14 THE COURT: All right. Mr. Morris, go ahead.

15 DIRECT EXAMINATION

16 BY MR. MORRIS:

17 Q Good afternoon, Mr. Post. We met the other day. Do you
18 remember that?

19 A I do.

20 Q Okay. So, again, just to remind you, my name is John
21 Morris. I'm an attorney at Pachulski, Stang, Ziehl & Jones.
22 We represent the Debtor here. You're the chief compliance
23 officer for each of the Defendants; is that right?

24 A I am.

25 Q And in your role as the chief compliance officer, your job

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1 is to act as a liaison between regulatory bodies and internal
2 working groups with respect to the rules and regulations for
3 the funds advised by the Advisors; is that correct?

4 A Correct, that's -- that's the (inaudible). Correct.

5 Q All right. And internally, you report to Mr. Dondero.
6 Isn't that right?

7 A Correct.

8 Q And you've been working with Mr. Dondero since 2008 when
9 you joined Highland Capital Management, correct?

10 A I worked at Mr. Dondero's firm since 2008, but I reported
11 to other direct reports during that time outside of Mr.
12 Dondero. I started to report to him directly in October of
13 2020.

14 Q Okay.

15 A (overspoken)

16 Q But you've -- you've worked at Highland -- you worked at
17 Highland since 2008, fair?

18 A Yes.

19 Q Okay. And you were employed by Highland up until October
20 2020, correct?

21 A Yes.

22 Q Okay. And at that time, Mr. Dondero left and he went to
23 NexPoint and you went to NexPoint. Is that right?

24 A Shortly after Mr. Dondero left Highland, I transitioned
25 over to NexPoint.

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1 Q And that's where Mr. Dondero is, right?

2 A Correct.

3 Q Okay. You joined Highland in 2008, and in around 2011 you
4 joined Highland's internal legal and compliance team, correct?

5 A That's correct.

6 Q And in 2015, while still employed by Highland, Mr. Dondero
7 appointed you as the chief compliance officer of the Advisors
8 and the Funds, right?

9 A Technically, the retail board appointed me the CCO of the
10 Funds, and then I was appointed internally. I believe Mr.
11 Dondero was part of that decision for the Advisors.

12 Q Had you ever worked with the retail boards before that?

13 A There was about -- I worked with them for about a year
14 prior to that.

15 Q Okay. And you've served as the CCO, the chief compliance
16 officer, of each of the Advisors and each of the Funds since
17 September 2015 on a continuous basis, right?

18 A That is correct.

19 Q You know Thomas Surgent; is that right?

20 A I do.

21 Q Mr. Surgent has been the Debtor's chief compliance officer
22 since around 2013 or 2014; is that right?

23 A I believe -- uh -- I -- I think that's correct. It may be
24 a year or two off. He took the role after the former CO
25 resigned, which I don't know if that was 2011 or 2012. I

1 can't recall specifically.

2 Q Okay. But he's been -- he's been in that position for a
3 long time, right? Fair enough?

4 A Yes, that's fair.

5 Q And during the whole time that you were employed by
6 Highland and serving as the chief compliance officer for the
7 Funds and the Advisors, you reported to Mr. Surgent?

8 A Internally. Yes, that's correct.

9 Q Yeah. And you respect Mr. Surgent; isn't that right?

10 A During the time I reported to him, yes.

11 Q Yeah. And you believed that he did his job well, right?

12 A As far as I could see, yes.

13 Q You viewed it as -- you viewed him as a mentor, did you
14 not?

15 A Yes. I mean, when I joined the legal compliance team, you
16 know, he was there. He was a senior member on the team. And
17 he, you know, helped educate me, along with other, you know,
18 external sources, et cetera, on the compliance function.

19 Q Uh-huh. He trained you for the work you're doing now,
20 right?

21 A With respect to the on-the-job training, yes.

22 Q Uh-huh. Despite all of that, throughout all the
23 proceedings, the court hearings, all of the issues that we're
24 talking about in this case, you never, ever stopped to discuss
25 any of these issues with your former mentor, Mr. Surgent; is

1 that right?

2 A The -- with respect to, for example, the trade (garbled)
3 that you were talking about earlier?

4 Q Let's do it this way. From the time that you left
5 Highland until today, you've never discussed with Mr. Surgent
6 Mr. Seery's trades; is that right?

7 A I believe there was a discussion after -- I can't recall
8 exactly the context. There was a discussion after the trades
9 in the November time frame. And then I believe there was a --
10 I responded to an email exchange in the December time frame
11 regarding booking of the trades.

12 Q Sir, you -- you've never spoken with Mr. Surgent about any
13 issue concerning the Debtor's management of the CLOs, correct?

14 A I don't recall directly, no.

15 Q In fact, you're not aware of anyone acting on behalf of
16 the Advisors or the Funds who has reached out to Mr. Surgent
17 to get his views on any of the issues related to this motion.
18 Isn't that right?

19 A I believe previously there's correspondence that Mr.
20 Dondero had with Surgent. But aside from that, I'm not aware
21 of any.

22 Q Is that the email where he reminded him of his personal
23 liability? Is that the one you're thinking of?

24 A Correct.

25 Q Yeah. Do you know of any other communication -- do you

1 know of any other communication that any of the Defendants had
2 with Mr. Surgent concerning the Debtor's management of the
3 CLOs?

4 A With Mr. Surgent directly, I don't -- I don't -- I don't
5 believe so.

6 Q Yeah. You graduated from Baylor; is that right?

7 A Correct.

8 Q But you don't have any certifications or licenses
9 applicable to your work, correct?

10 A Correct.

11 Q You don't have any specialized training or education
12 that's relevant to your work as a chief compliance officer,
13 correct?

14 A Correct.

15 Q Your job -- your training is limited to on-the-job
16 training; isn't that right?

17 A That is correct.

18 Q You've never spoken at any conferences on compliance
19 matters, have you?

20 A Spoken, no. Attended, yes.

21 Q You don't recall presenting any papers at any compliance-
22 related conferences, do you?

23 A That is correct.

24 Q You've never published anything in connection with your
25 work as a compliance officer; isn't that right?

1 A Not that I can recall.

2 Q Let's talk about the CLO management agreements briefly.

3 You're aware that the Debtor is party to certain management

4 agreements pursuant to which it serves as the portfolio

5 manager for certain CLOs, correct?

6 A Correct.

7 Q And until your lawyers recently asked you to review them,

8 you last had reason to review a CLO management agreement about

9 five or six years ago; isn't that right?

10 A I believe that's correct.

11 Q And the request from your lawyers to look at the CLO

12 management agreements, that request came in late November/

13 early December; isn't that right?

14 A I believe that's around the right time frame.

15 Q And the portions of the management agreements that you

16 read were the portions that your counsel asked you to read;

17 isn't that right?

18 A Correct.

19 Q And other than the general recollection of having read

20 something about the rights of preference shareholders, you

21 don't recall much about the agreements at all; isn't that

22 right?

23 A I mean, the agreements are very lengthy in nature. You

24 know, I think it was probably rights that the preference

25 shareholders had, and, you know, possibly indemnification

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1 provisions. But aside from that, I don't recall anything else
2 specifically right now.

3 Q As the chief compliance officer of the Advisors and the
4 Funds, you don't know whether any of them are party to the CLO
5 management agreements between the Debtors and -- between the
6 Debtor and the Issuers, correct?

7 MR. RUKAVINA: And Your Honor, I would just object to
8 the extent that that calls for a legal conclusion. This
9 witness is not a lawyer.

10 THE COURT: Overruled.

11 THE WITNESS: I'm sorry. Can you repeat the
12 question, please?

13 BY MR. MORRIS:

14 Q Sure. As the chief compliance officer for each of the
15 Defendants, you don't know whether any of them are party to
16 the CLO management agreements between the Debtor and the
17 Issuers, correct?

18 A They're not the named collateral manager, but they're a
19 security holder of the CLOs, so they should be entitled to,
20 you know, the rights that those security holders are afforded
21 under those agreements.

22 MR. MORRIS: I move to strike, Your Honor.

23 THE COURT: Granted.

24 BY MR. MORRIS:

25 Q All right. So, now, Mr. Post, I know this is difficult,

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1 and I do appreciate that it's difficult just to focus on the
2 question. Your counsel will have the opportunity to ask you
3 whatever he wants. But I would respectfully request that you
4 listen to my question and only answer my question. It really
5 is very likely to require just a yes or no answer.

6 So, let me try again. As the chief compliance officer of
7 the Advisors and the Funds, you don't know whether any of them
8 are a party to the CLO management agreements between the
9 Debtor and the Issuers, correct?

10 A I don't believe they are, correct.

11 Q Okay. Let's talk about that prior hearing. Now, by the
12 way, Mr. Post, did you listen in to Mr. Dondero's testimony
13 earlier?

14 MR. RUKAVINA: Mr. Post was here with me --

15 MR. MORRIS: Yeah.

16 MR. RUKAVINA: -- as my representative..

17 MR. MORRIS: Okay. I -- there's no problem. I just
18 -- I just -- that way there's some background and he has some
19 context. That's the only reason I asked.

20 BY MR. MORRIS:

21 Q You're aware that the Funds and the Advisors previously
22 filed a motion in the Bankruptcy Court asking the Court to
23 institute a pause in the Debtor's ability to sell CLO assets,
24 correct?

25 A Correct.

1 Q And you recall that that happened in mid-December, around
2 December 16th; is that right?

3 A That sounds correct.

4 Q And in connection with that motion, you provided
5 information to counsel that they requested from you, right?

6 A Yes. I was part of the working -- internal working group,
7 with internal and external counsel.

8 Q Other than providing that information, you generally
9 agreed with the position being taken that it wasn't in the
10 best interest of the Funds involved for Highland to make any
11 trades; isn't that right?

12 A Yes. And that was based off of discussions with the
13 investment professionals.

14 Q And the investment professionals are Mr. Sowin and Mr.
15 Dondero, correct?

16 A Correct.

17 Q Okay. So you're the chief compliance officer, and they
18 made a motion that was based on the idea that the fund
19 manager, Highland Capital Management, shouldn't trade any
20 assets in the CLOs. Do I have that right?

21 A I believe that's what the motion contained.

22 Q But you don't even remember who authorized the filing of
23 the motion; isn't that right?

24 A I believe it was pursuant to discussions internally and
25 with external counsel, and I believe Mr. Norris signed the

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1 filing, if I -- if I recall correctly.

2 Q Sir, you don't remember who authorized the filing of the
3 motion, correct?

4 A It -- it was pursuant to a discussion with the investment
5 professionals and counsel, and it was in the best interest of
6 the Funds to make the filing. So I think it was a
7 collaborative determination.

8 MR. MORRIS: I move to strike, Your Honor.

9 THE COURT: Granted.

10 MR. MORRIS: Ms. Canty, can we please pull up Mr.
11 Post's deposition transcript? And let's go to Page 35. Line
12 21. Okay.

13 BY MR. MORRIS:

14 Q Do you remember giving the following answer to the
15 following question:

16 "Q Who authorized the filing of this motion?

17 "A I can't recall specifically who authorized it."

18 Q Did you give that answer to my question just the other
19 day?

20 A That's -- that's what it says there, yes.

21 Q And it says that because that's, in fact, what you
22 testified to under oath the other day, right?

23 A Correct.

24 Q Okay. And the one thing that you know for certain is that
25 you didn't authorize the filing of the motion; isn't that

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1 right?

2 A I didn't sign anything in connection with the filing.

3 Q All right. Listen carefully to my question. The one
4 thing that you're certain of is that you did not authorize the
5 filing of the motion as the chief compliance officer of the
6 Debtors, correct?

7 A Correct.

8 Q Okay. But you did participate in conversations with Mr.
9 Dondero and counsel concerning the motion; is that fair?

10 A There were conversations with Mr. Dondero initially, and
11 then the conversations were then more so with internal and
12 external counsel in terms of the filing.

13 Q Okay. So they started just with Mr. Dondero, and then
14 they moved on to counsel. Is that what you're saying?

15 A I can't recall specifically. It may have been part of a
16 discussion internally with internal counsel and Mr. Dondero.
17 I just -- I can't recall the specifics.

18 Q Okay. But Mr. Dondero certainly supported the filing of
19 the motion, right?

20 A Yes. From an investment perspective, it was in the best
21 interest of the Funds in terms of the sales that were
22 occurring.

23 Q Okay.

24 MR. MORRIS: I move to strike.

25 THE COURT: Granted.

1 BY MR. MORRIS:

2 Q It's a very simple question. Mr. Dondero supported the
3 filing of the motion; is that correct?

4 A Yes.

5 Q You did not file a declaration in support of the motion;
6 is that correct?

7 A Me personally, no.

8 Q Okay. So you're the chief compliance officer of the
9 Defendants; is that right?

10 A Correct.

11 Q But instead of you filing a declaration, Mr. Norris filed
12 the declaration. Do I have that right?

13 A Correct. My understanding is one person needs to sign the
14 declaration.

15 Q And remind me, what is Mr. Norris's position? He's the
16 executive vice president, right?

17 A Correct.

18 Q What responsibilities does he have? Does he have trading
19 responsibility?

20 A He does not.

21 Q Does he have compliance responsibility?

22 A Not directly, no.

23 Q Does he have investment responsibility?

24 A He's familiar with the composition of the portfolios in
25 his role as a product strategy team member.

1 Q Does he have investment responsibility, sir?

2 A He is not making direct investments for the -- for the
3 Funds.

4 Q Okay. So he doesn't -- and he's not a compliance person,
5 right?

6 A Correct.

7 Q And he's not a lawyer, right?

8 A Correct.

9 Q But nevertheless, as the chief compliance officer, you
10 believed that Mr. Norris's declaration contained all of the
11 information that was relevant to support the motion, right?

12 A It was a determin... or a collaborative determination in
13 conjunction with counsel. But I, you know, I don't -- yeah,
14 it was -- it was a collaborative determination. There were
15 multiple elements that went into that -- the letter.

16 Q Okay. You believed that the motion and Mr. Norris's
17 declaration contained all the relevant facts that supported
18 the Advisors and the Funds' requests to the Court, correct?

19 A Yes.

20 Q In fact, you believed that Mr. Norris was the most
21 knowledgeable person to testify on behalf of the Movants;
22 isn't that right?

23 A I think it was -- he was identified pursuant to
24 discussions with counsel to be the most knowledgeable.

25 Q I'm going to ask you just about you and not counsel. You

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1 believed at the time that Mr. Norris was the most
2 knowledgeable witness to testify on behalf of the Movants;
3 isn't that right?

4 A Yes.

5 Q And you didn't testify -- not only didn't you submit a
6 declaration, but you didn't testify at the hearing, did you?

7 A Correct on both.

8 Q Okay. And you listened to parts of the hearing, but not
9 all of it, because you were busy doing other stuff, right?

10 A Correct.

11 Q You didn't listen to Mr. Norris's testimony at all, right?

12 A I don't believe I did.

13 Q You didn't listen to the Court when the Court rendered its
14 decision, did you?

15 A I don't -- I don't believe I did.

16 Q And you didn't read the transcript from the hearing, did
17 you?

18 A I don't -- correct. I did not.

19 Q Okay. So in your capacity as the chief compliance
20 officer, you didn't believe that you should take the time to
21 review the transcript, did you?

22 A Correct. I mean, just it was filed based off of the
23 belief that the -- that the trades weren't in the best
24 interest, and I -- and no, I didn't read it personally.

25 Q And you didn't believe, in -- that in your capacity as the

1 CCO, the chief compliance officer, that it was in the scope of
2 your responsibility to listen to the hearing, correct?

3 A I was -- I wasn't asked to listen, and quite frankly, I
4 don't -- I don't recall if I remember the timing, but I did
5 not listen.

6 Q Okay. And in your capacity as the chief compliance
7 officer, you didn't believe that it was in the scope of your
8 responsibilities to listen to the hearing; isn't that right?

9 A Correct.

10 Q And because you didn't listen to the hearing or review the
11 transcript, you were unaware of what the Court said or how
12 Judge Jernigan described the motion or the people involved in
13 presenting the case on behalf of the Defendants, right?

14 A Correct, but I -- I believe I probably would have received
15 some guidance from counsel who attended or listened to the
16 hearing.

17 Q Well, after the hearing was over, you did speak to Mr.
18 Norris, right?

19 A Very briefly.

20 Q In fact, --

21 A Very --

22 Q In fact, the only thing you can remember about your
23 conversation with Mr. Norris following the hearing was
24 discussing with him how long the hearing took. Isn't that
25 right?

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1 A Correct, because I -- I believe I heard it was a short
2 hearing.

3 Q And that's -- that's all -- that's all you asked Mr.
4 Norris about, about the hearing, right? That's all you
5 remember talking to him about?

6 A I believe so, correct.

7 Q You don't recall discussing with Mr. Norris any other
8 aspect of the hearing other than the length of time it took to
9 conduct, correct?

10 A I don't recall specifically.

11 Q And you have no recollection of ever discussing with Mr.
12 Dondero what happened at the hearing, right?

13 A I don't think I talked with Jim, Jim Dondero about that.

14 Q Nor did you talk to Mr. Dondero about the Court's ruling;
15 isn't that right?

16 A Correct.

17 Q Okay. Let's talk about the events that occurred after the
18 hearing, in the two weeks following the hearing. The
19 Defendants for which you serve as the chief compliance officer
20 sent three separate letters to the Defendant [sic], correct?

21 A If you could bring them up, I can confirm.

22 Q Sure.

23 MR. MORRIS: Let's start with DDDD, please. Okay.

24 Okay. Can we scroll to the attachment, please?

25 BY MR. MORRIS:

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1 Q All right. So this is the first letter, Mr. Post. Do you
2 recall, on or about December 22nd, the K&L Gates firm sent, on
3 behalf of the Advisors and Funds for which you serve as the
4 chief compliance officer, a letter to the Debtors?

5 A Yes.

6 Q Okay.

7 MR. MORRIS: And can we call the next exhibit? I
8 guess it's EEEE.

9 And I don't mean to be quick about these. If there's any
10 reason that you want to read them, I wasn't planning on asking
11 any questions about the substance of the letters of this
12 witness.

13 BY MR. MORRIS:

14 Q But Mr. Post, I don't mean to be quick here. So if you
15 think there's a benefit to you to reading the letters, please
16 let me know.

17 Do you see, December 23rd, the next day, another letter
18 was sent by K&L Gates?

19 A Yes.

20 Q Okay. And do you recall generally that the Advisors and
21 Funds for which you serve as chief compliance officer told the
22 -- told the Debtor that they were going to begin the process
23 of seeking to terminate the CLO management agreements?

24 A I believe -- I believe that was contained in the letter,
25 so long as it was done in compliance with the Court.

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1 Q Uh-huh. And do you remember there was a third letter that
2 was sent?

3 A If you wouldn't mind pulling it up.

4 Q Yeah, not at all.

5 MR. MORRIS: Can we get the December 31st letter? I
6 think it might be -- yeah.

7 BY MR. MORRIS:

8 Q Now, here's the December 31st letter. Do you remember the
9 December 31st letter was the one where K&L Gates suggested
10 that the Advisors and the Funds had suffered damages because
11 the Debtor evicted Mr. Dondero from the Highland suite of
12 offices?

13 A I -- I had heard of that letter being drafted, but I don't
14 recall -- I obviously don't recall a specific date. But if it
15 says December 31st, --

16 Q Okay. Mr. Dondero was one of the main voices in the
17 decision to send these letters, correct?

18 A He was part of the preliminary conversation and expressed
19 his opinion, and then myself and others internally, and with
20 external counsel, then worked to draft the letters.

21 THE COURT: All right. Mr. Post, I am going to
22 interject. I have heard Mr. Morris give you this instruction
23 many times. Maybe it's time for me to. Maybe it's past time
24 for me to.

25 Most of his questions simply require a yes or no answer.

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1 If you feel like there are other things that you want to
2 supplement your testimony with, Mr. Rukavina is going to have
3 a chance to question you, and that would be the situation
4 where maybe you could give more fulsome answers. But please
5 listen to the question. If it's a yes or no answer, that's
6 all we want you to give right now. Okay? Got it?

7 THE WITNESS: Understood.

8 THE COURT: Okay.

9 MR. MORRIS: Thank you, Your Honor.

10 BY MR. MORRIS:

11 Q Mr. Post, Mr. Dondero was one of the main voices in the
12 decision to send the letters; isn't that correct?

13 A He was a voice.

14 THE COURT: That was not a yes --

15 BY MR. MORRIS:

16 A And he was -- he --

17 THE COURT: Okay.

18 THE WITNESS: I'm --

19 THE COURT: Please, just a yes or no answer, okay?

20 THE WITNESS: No.

21 MR. MORRIS: Okay. Can we go to Mr. Post's
22 transcript, please, Page 47? Line 22?

23 And Your Honor, when we pull it up on the screen, there is
24 an objection, and I would respectfully request that the Court
25 rule on the objection before I read the question and the

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1 answer.

2 THE COURT: All right.

3 MR. MORRIS: So if we could just call up Page 47
4 beginning at Line 22.

5 MR. RUKAVINA: Page 47, Line 22.

6 THE COURT: Okay.

7 MR. MORRIS: One moment. Give her a moment. She's
8 not there.

9 MR. RUKAVINA: Do you remember what exhibit this is?

10 MR. MORRIS: Yeah. There it is. Beginning at Line
11 22, "Do you know?" And there is Mr. Rukavina's objection.

12 MR. RUKAVINA: Your Honor, it's very simple. He
13 can't go into Mr. Dondero's head. But he -- but if Mr.
14 Dondero told him something, that's different. So I think
15 counsel can rephrase the question and it's perfectly fine, but
16 he can't go into Mr. Dondero's state of mind.

17 MR. MORRIS: Your Honor, I'm not asking for Mr.
18 Dondero's state of mind. I'm asking for Mr. Post's knowledge.
19 "Do you know?"

20 THE COURT: Okay. I'll overrule the objection. He
21 can answer.

22 BY MR. MORRIS:

23 Q All right. So, Mr. Post, do you remember giving this
24 answer to the following question:

25 "Q Do you know whether Mr. Dondero supported the

1 sending of each of these three letters?

2 "A I don't -- I don't recall specifically. I think
3 he had his views on certain of the transactions that
4 were occurring, and he wasn't in agreement with those
5 transactions, as one of the main voices."

6 Q Do you see that?

7 A I do.

8 Q Does that refresh your recollection that Mr. -- that you
9 testified that Mr. Dondero was one of the main voices?

10 A Yes.

11 Q Okay. Mr. Dondero --

12 MR. MORRIS: You can take that down now for the
13 moment, please.

14 BY MR. MORRIS:

15 Q Mr. Dondero had his views on certain of the transactions
16 that were occurring, and he wasn't in agreement with those
17 transactions. Isn't that right?

18 A Yes.

19 Q All right. Going back to the letters that we just looked
20 at quickly, you recall the Debtor responded to each of those
21 letters, but as the chief compliance officer, you couldn't
22 really recall what the Debtor said in response. Is that fair?

23 A I'm -- I believe they -- I'm sorry. I can't recall
24 specifically without seeing the letters.

25 Q Okay. So you don't recall that, in response, the Debtor

1 requested that the Advisors and the Funds withdraw the
2 letters, right?

3 A I believe that was requested in the letters.

4 Q Okay. But the Funds and the Advisors didn't comply with
5 that request, right?

6 A To my knowledge, they have not withdrawn the letters.

7 Q You do recall that the Debtor specifically asked the
8 Defendants to file their lift stay motion so that they could
9 finally resolve the issue of whether or not the Advisors and
10 the Funds could actually terminate the agreement, right?

11 A I -- I'm sorry. Can you repeat that question, please?

12 Q Do you recall that the Funds and the Advisors informed the
13 Debtor that they were going to initiate steps to terminate the
14 CLO management agreements, including moving to lift the stay?

15 A I think they indicated that they were going to take steps,
16 but it would be pursuant to what was permitted in the court.

17 Q And do you remember that the Debtor specifically asked the
18 Defendants to do exactly that, to bring this matter to a
19 conclusion, to file the motion so that the Court could resolve
20 the issue of whether or not they had a right to terminate the
21 agreement? You remember that, right?

22 MR. RUKAVINA: Objection, compound, Your Honor.

23 THE WITNESS: I can't --

24 THE COURT: I'm sorry.

25 MR. MORRIS: I can't recall.

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1 THE COURT: Was there an objection?

2 MR. RUKAVINA: Yes, Your Honor. That's four
3 questions in one. That's compound.

4 MR. MORRIS: I'll rephrase, Your Honor.

5 THE COURT: Okay. And let me interject a minute.
6 Mr. Post, you have this habit of not looking squarely at the
7 camera but looking over to your right. And in a normal
8 courtroom setting, that might be fine, but I have no way of
9 knowing if some lawyer or some other person is -- you're
10 looking at them and they're somehow instructing you. I would
11 certainly hope that's not what's going on, but it just kind of
12 leaves room for me to wonder when you're not looking squarely
13 at the camera. So can you start looking squarely at the
14 camera, please?

15 MR. RUKAVINA: Your Honor, I can explain that, and
16 certainly there's no funny business going on. There are two
17 cameras on Mr. Post. One is on a laptop. We're looking at
18 the Court on the big camera. I'm sitting behind Mr. Post. So
19 if the Court would prefer that Mr. Post look directly into the
20 laptop, then that's what he'll do, or if the Court would
21 prefer that he look into the big camera.

22 THE COURT: Okay. Well, I prefer he look into the
23 big camera just because it --

24 MR. RUKAVINA: So keep looking there? Yeah.

25 THE COURT: No, no, no, no. Okay. I don't know what

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1 -- I thought -- okay. Do you see what I'm seeing? I don't
2 know if you can see what I'm seeing.

3 MR. MORRIS: Yes.

4 THE COURT: I'm seeing the left side of his face.

5 THE WITNESS: I'm sorry. I'll just look at the
6 laptop. Sorry. I was -- I was looking at who was speaking to
7 me.

8 THE COURT: Okay. Well, I don't --

9 MR. MORRIS: Okay.

10 THE COURT: I don't know the setup, so it was
11 confusing to me.

12 All right. This is better. Thank you.

13 THE WITNESS: Yeah. I apologize.

14 MR. RUKAVINA: We'll focus on the laptop, Judge.

15 BY MR. MORRIS:

16 Q All right. So the question, Mr. Post, is: You do recall
17 that the Debtor specifically asked the Defendants to file
18 their motion to lift the stay so that the issue could finally
19 be resolved; isn't that right?

20 A I can't recall that specifically.

21 Q You believe that may be one of the options that the Debtor
22 specifically proposed, right?

23 A It -- yes.

24 Q Okay. But the Defendants never filed their lift stay
25 motion to terminate the agreements; isn't that right?

1 A I don't believe so.

2 Q Right. So the Debtor filed its complaint and its request
3 for the injunction, right?

4 A Correct.

5 Q As the CO -- as the CCO, you may have reviewed the
6 Debtor's complaint and motion, but you can't recall, given all
7 the documentation that's involved, right?

8 A Correct.

9 Q You can't recall any facts that the Debtor asserted in
10 support of its motion; isn't that right?

11 A I can't recall specifically. Correct.

12 Q But the one thing you do know is that the Debtor's motion
13 is based on its entitlement to transact business pursuant to
14 their arrangement with the CLOs as collateral manager,
15 correct?

16 A Yes.

17 Q Now, you heard that there was supposed to be an initial
18 hearing on the Debtor's motion for a temporary restraining
19 order against the Defendants, right?

20 A Correct.

21 Q But you don't believe the motion for the TRO got heard,
22 and you presume it got resolved, right?

23 A I don't believe it was heard.

24 Q Okay. And you understand that there is a TRO in place
25 now, pursuant to which the Advisors and the Funds are

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1 prevented from interfering with the Debtor's execution of its
2 rights under the CLO management agreements, right?

3 A Correct.

4 Q Before the TRO was resolved, you weren't personally
5 involved in the process of deciding what witnesses would be
6 called and what exhibits would be offered into evidence; is
7 that right?

8 A No.

9 MR. MORRIS: During the deposition, Your Honor,
10 subject to correction from Mr. Rukavina, I believe that the
11 Defendants and the Debtor reached the following two
12 stipulations.

13 First, the Defendants and the Debtor stipulate that Mr.
14 Post was not going to be called as a witness at the TRO
15 hearing.

16 MR. RUKAVINA: That is correct.

17 MR. MORRIS: And second, the Defendants and the
18 Debtor stipulate that the Defendants were not going to offer
19 into evidence any exhibits other than those specifically
20 listed on their witness and exhibit list.

21 MR. RUKAVINA: That being the witness and exhibit
22 list filed before the TRO. That is correct.

23 MR. MORRIS: Okay.

24 BY MR. MORRIS:

25 Q Let's talk about Mr. Seery for a minute. You know who Mr.

1 Seery is, correct?

2 A Correct.

3 Q You understand he's an independent director and the CEO of
4 the Debtor, right?

5 A Correct.

6 Q And you also understand that his -- in his capacity as the
7 Debtor's CEO, Mr. Seery is authorized to sell certain
8 securities and assets that are owned by the CLOs, correct?

9 A Correct.

10 Q In your opinion as the CCO, the chief compliance officer
11 of the Advisors and the Funds, Mr. Seery has the knowledge and
12 experience to trade securities on behalf of the CLOs, correct?

13 A Correct.

14 Q But you don't believe that it's in the Funds' best
15 interest for Mr. Seery to sell SKY and AVYA securities, right?

16 A Correct.

17 Q But even though you reached that decision about Mr. Seery,
18 you have no knowledge as to whether Mr. Dondero ever traded
19 either of those securities before he resigned from Highland;
20 isn't that right?

21 A I saw some trades that were shown on the screen earlier.
22 I don't think I recalled at the time I was asked on Friday.

23 Q As of the time -- as of Friday, you had no knowledge as to
24 whether Mr. Dondero had traded in AVYA securities prior to his
25 departure from Highland, correct?

1 A Correct.

2 Q And before, before forming your view as the chief
3 compliance officer that Mr. Seery's trading of AVYA was not in
4 the best interest of the Funds, you made no effort to see if
5 Mr. Dondero had sold the exact same securities Mr. Seery was
6 selling, correct?

7 A Correct.

8 Q And the sole source of information that you relied upon to
9 reach your opinion that the trades weren't in the best
10 interest of the Funds is Jim Dondero and Joe Sowin, correct?

11 A I'm sorry. Can you repeat that? You kind of cut out at
12 the beginning.

13 Q Sure. And please, any time that happens, let me know. We
14 had some problems this morning.

15 The sole source of information that you relied upon to
16 reach your opinion that the trades weren't in the best
17 interest of the funds is Jim Dondero and Joe Sowin; isn't that
18 correct?

19 A Correct. They're the investment professionals, yes.

20 Q And you have no understanding as to why Mr. Seery wanted
21 to sell the AVYA and SKY securities, do you?

22 A I was told that -- I don't know why he wanted to sell them
23 personally, correct.

24 Q Okay. In fact, before reaching your conclusion as the CCO
25 that Mr. Seery's trades were not in the best interest of the

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1 Fund, you did not undertake any investigation of any kind to
2 try to determine why Mr. Seery wanted to sell AVYA or SKY
3 stock, correct?

4 A Correct. I didn't reach out to Mr. Seery.

5 Q All right. You believe that Mr. Dondero and Mr. Sowin's
6 opinion that Mr. Seery's trades aren't in the Funds' best
7 interest should be heard pursuant to the Advisers Act, right?

8 A Correct.

9 Q Specifically, Section 2000 -- 206 of the Advisers Act,
10 right?

11 A Correct.

12 Q Have you ever read Section 206 of the Advisers Act?

13 A Yes.

14 Q Okay.

15 MR. MORRIS: Ms. Canty, can you please put up the
16 demonstrative for Section 206 of the Advisers Act?

17 MR. RUKAVINA: Your Honor, the witness just asked me
18 for water. Nothing more.

19 THE COURT: Okay.

20 MR. MORRIS: Yeah. No problem.

21 BY MR. MORRIS:

22 Q I've put on the screen Section 206 of the Advisers Act,
23 Mr. Post. Can you please tell the Court what provision of 206
24 you believe Mr. Seery allegedly breached when he sought to
25 sell AVYA and SKY securities?

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1 A It would be Number 4.

2 Q Do you believe that Mr. Seery engaged in fraudulent,
3 deceptive, or manipulative practices by trying to trade AVYA
4 and SKY securities?

5 A The -- as collateral manager for the CLOs, they're
6 supposed to maximize returns for the preference shares, which
7 we didn't believe the sales reflected that, and so they
8 weren't acting, --

9 THE COURT: Okay.

10 THE WITNESS: -- you know, pursuant to their duties
11 --

12 THE COURT: Here I -- here I go --

13 THE WITNESS: -- under the collateral management --

14 THE COURT: Here I go again. Here you go again.

15 THE WITNESS: I'm sorry.

16 THE COURT: It really was a yes or no question. All
17 right?

18 BY MR. MORRIS:

19 Q You're the -- you're the chief compliance officer, right?

20 A Yes.

21 Q And this is the provision in Section 4 that you cite to as
22 the provision that Mr. Seery violated when he attempted to
23 sell SKY and AVYA securities, correct?

24 A Yes.

25 Q Did Mr. Seery engage in an act, practice, or course of

1 business which was fraudulent when he looked to sell those
2 securities?

3 A No.

4 Q Do you believe that Mr. Seery engaged in an act, a
5 practice, or a course of business which was deceptive when he
6 went to sell the SKY and the AVYA securities?

7 A Yes.

8 Q Who did he deceive?

9 A The investors of the CLOs, --

10 Q How?

11 A -- the preference shareholders.

12 Q How?

13 A By selling securities that the preference shareholder
14 investors believed had further upside to them.

15 Q Did he lie to them?

16 A I don't believe he talked to the investors.

17 Q But you're putting your reputation on the line here and
18 you're swearing under oath that Mr. Seery deceptively tried to
19 sell SKY and AVYA securities?

20 A I believe that based off of a review and discussion with
21 counsel.

22 Q Do you think he was manipulative?

23 A No.

24 Q Did you -- did you check in with the SEC to tell them that
25 you had a bad actor here?

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1 A No.

2 Q You first formed your view that the Debtor violated
3 Section 206 of the Advisers Act after the sales started to
4 occur in the CLOs, correct?

5 A Correct.

6 Q But you don't know when the sales actually started, right?

7 A I believe there were sales --

8 Q And I assume, since you were the chief compliance officer
9 since 2015, you don't believe that Mr. Dondero's sale of AVYA
10 stock was deceptive, right?

11 A You would have to ask Mr. Dondero that, but I believe he
12 was selling for cash, cash needs for other funds.

13 MR. MORRIS: Okay. I move to strike. I'm asking him
14 not --

15 THE COURT: Sustained.

16 BY MR. MORRIS:

17 Q I'm asking about you. I'm asking about you. You're the
18 chief compliance officer, right?

19 A Yes.

20 Q And you don't believe that when Mr. Dondero sold AVYA
21 stock that he was engaged in deceptive practices, do you?

22 A No.

23 Q And that's because you don't even know whether he sold
24 AVYA stock; isn't that right?

25 A On Friday, I -- that is correct.

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1 Q In fact, the only reason you learned that Mr. Seery wanted
2 to sell AVYA and SKY stock is because Mr. Dondero told you;
3 isn't that right?

4 A I believe I was forwarded the email after -- after there
5 was communications on the sales.

6 Q And that's the email where Mr. Dondero told Mr. Surgent
7 that he had personal liability, correct?

8 A I -- I believe it was an email prior to that about were
9 trades being requested and Mr. Dondero responding.

10 Q You're familiar with the email where Mr. Dondero
11 interfered with Mr. Seery's trades?

12 A Yes.

13 Q Okay. And you're aware that Mr. Dondero told Mr. Surgent
14 that he faced potential liability if he continued to follow
15 Mr. Seery's instructions, correct?

16 A Correct. Based off of Mr. Dondero's view.

17 Q Notwithstanding all of that, in your capacity as the chief
18 compliance officer, you don't believe it's ever appropriate
19 for an investor to step in and impede transactions that have
20 been authorized by the portfolio manager unless the contract
21 permits the investor to step in; isn't that right?

22 A I believe -- I'm sorry, can you repeat that, please?
23 There was a lot of question.

24 Q Sure. Sure. In your capacity as the chief compliance
25 officer, you don't believe it's ever appropriate for an

1 investor to step in and impede transactions that were
2 authorized by the portfolio manager unless the contract
3 permits the investor to do so; isn't that correct? Isn't that
4 correct?

5 A Yes.

6 Q Okay. I know you're not a lawyer, but you are the chief
7 compliance officer of the Funds; isn't that right?

8 A Correct.

9 Q And you can't point to anything in any contract that gives
10 Mr. Dondero the right to step in and impede transactions that
11 have been authorized by Mr. Seery; isn't that correct?

12 A He's entitled rights as preference shareholders for the --
13 for the Funds that hold those preference shareholders. So,
14 indirectly, he should be afforded those rights as portfolio
15 manager for those Funds.

16 Q Sir, you can't point to anything in any contract that
17 gives Mr. Dondero the right to step in and impede transactions
18 that have been authorized by Mr. Seery; isn't that correct?

19 A Correct.

20 Q Okay. But yet you have never told Mr. Dondero that he
21 should not interfere with Mr. Seery's trades; isn't that a
22 fact?

23 A Correct.

24 Q In fact, you never personally took any steps at any time
25 to make sure that there would be no further interference with

1 the Debtor's trading activities; isn't that correct?

2 A Correct.

3 Q And that's because you believe, as the chief compliance
4 officer of the Funds, that Mr. Dondero should have the leeway
5 to make the determination as to whether or not the
6 transactions are appropriate; isn't that correct?

7 A He should be able to be heard in the transactions that are
8 being made, correct.

9 Q Sir, not to be heard, but to make the determination. Let
10 me ask the question again. You believe, as the CO -- CCO of
11 the Funds, that Mr. Dondero should have the leeway to make the
12 determination as to whether or not the transactions are
13 appropriate; isn't that correct?

14 A Yes.

15 Q Okay. And you completely deferred to Mr. Dondero; isn't
16 that right?

17 A For the investment determination, yes.

18 Q And based on that deference, you never took any steps at
19 any time to make sure no one on behalf of the Advisors or the
20 Funds impeded or stopped transactions authorized by Mr. Seery,
21 correct?

22 A Correct.

23 Q You understand there's a TRO in place today that prevents
24 Mr. Dondero and the Advisors and the Funds from interfering
25 with Mr. Seery's trading activities; isn't that right?

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1 MR. RUKAVINA: I'm going to object to that, Your
2 Honor, to the extent that calls for a legal conclusion. And I
3 do think it mischaracterizes the testimony. I'm sorry. The
4 TRO.

5 THE COURT: Overruled.

6 BY MR. MORRIS:

7 Q You can answer, sir. Would you like me to repeat the
8 question?

9 A Yes, please.

10 Q You understand that there is a TRO in place -- TRO in
11 place today that prevents Mr. Dondero, the Advisors, and the
12 Funds from interfering with Mr. Seery's trading activities on
13 behalf of the CLOs, correct?

14 A Correct.

15 Q But in the absence of the TRO, in your view, whether you
16 tell Mr. Dondero not to interfere with Mr. Seery's trades
17 depends on the facts and circumstances that exist at the time,
18 right?

19 A Correct. From a -- yes.

20 Q Okay. And up until this point, there have been no facts
21 and circumstances that have caused you to tell Mr. Dondero not
22 to interfere with Mr. Seery's trades on behalf of the CLOs,
23 correct?

24 A He can't because of the TRO.

25 Q Correct. But if the TRO wasn't in place, it's possible

1 that you wouldn't take any steps to stop Mr. Dondero from
2 impeding Mr. Seery's trades; isn't that right?

3 A I mean, if Mr. Dondero or other investment professionals
4 have a view, that they should be -- they should have a right
5 to be heard as preference shareholders of the CLOs.

6 Q Okay. But if the TRO wasn't in place, you wouldn't act to
7 stop Mr. Dondero from interfering or impeding the Debtor's
8 trades on behalf of the CLO; isn't that right?

9 A He would -- if he would be permitted to talk to Mr. Seery.

10 Q Okay. Prior to the imposition of the TRO, you took no
11 steps to stop Mr. Dondero from interfering with Mr. Seery's
12 trades, correct?

13 A Correct.

14 Q And if the TRO wasn't in place, it's possible you wouldn't
15 take any steps to stop Mr. Dondero from impeding -- impeding
16 Mr. Seery's trades again; isn't that right?

17 A If there's an investment rationale as to why they feel the
18 trades shouldn't be done, I -- again, I feel like Mr. Dondero
19 or the other investment professionals should be able to raise
20 those points with Mr. Seery.

21 Q Do you think they should be able to stop the trades?

22 A I -- I -- I think they should be able to question the
23 trades. But flat-out stop them, I'd probably say no.

24 Q Then why didn't you do anything before the TRO was
25 entered?

1 A Um, I'm sorry, can you repeat the -- do anything in -- in
2 what manner?

3 Q Why didn't you take any steps before the TRO was entered
4 to stop Mr. Dondero from interfering and stopping and impeding
5 the Debtor's trades?

6 A I think, as I recall, there was only one -- one set of
7 trades in question that he stepped in on.

8 Q So, one is okay? How about two?

9 A Or, sorry. There were two trades on one day that -- that,
10 you know, he questioned. Or stepped in on. I don't -- I
11 don't recall him stopping any other trades thereafter.

12 Q That's all you know about, right?

13 A Correct.

14 Q And with that knowledge, it never occurred to you to tell
15 Mr. Dondero to knock it off, did it?

16 A He believed the trades weren't in the best interest for
17 the investors, so I did not.

18 Q And that's what you mean by deferring to him; isn't that
19 right?

20 A From the investment perspective, yes.

21 Q Thank you for your -- thank you for your honesty. As the
22 CCO, you have never communicated with the Issuers about the
23 Debtor's performance under the CLO management agreements;
24 isn't that right?

25 A Correct.

1 Q And that's because you didn't believe it was in your
2 responsibility as the CCO to check with the Issuers to see if
3 the Issuers believed that the Debtor was in compliance with
4 the CLO management agreements, correct?

5 A That communication would have involved counsel and that
6 communication didn't occur. I wouldn't have reached out to
7 them directly.

8 Q Yeah. You didn't believe it was within your
9 responsibility as the chief compliance officer to communicate
10 with the Issuers to see if they had any views as to Mr.
11 Seery's performance as portfolio manager, correct?

12 A Correct, because it would have involved me working with
13 counsel and there was never direction to do that.

14 Q As the chief compliance officer of the Defendants, you
15 have no idea if anyone on behalf of the Advisors or the Funds
16 ever asked the Issuers whether they believed the Debtor was in
17 default under the CLO management agreements, correct?

18 A Correct.

19 Q As the CCO, you have no idea if anyone on behalf of the
20 Advisors or the Funds ever asked the Issuers whether they
21 believed was in breach under the CLO management agreements,
22 correct?

23 A Correct. I believe there was a call that I wasn't a part
24 of, that it was just involving lawyers, that I don't know what
25 was discussed on the call. So, correct.

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1 Q As the CCO, you have no idea if anyone on behalf of the
2 Advisors or Funds ever asked the Issuers whether they believed
3 it was appropriate to try to take steps to terminate the CLO
4 management agreements; isn't that right?

5 A Correct.

6 Q None of the Issuers joined any of the letters that were
7 sent on behalf of the Funds and the Advisors, right?

8 A I didn't -- I don't recall seeing their names listed.

9 Q As the CCO, you don't have any understanding as to what
10 the standard is for terminating the CLO management agreements
11 unless you get legal advice; isn't that right?

12 A Yes. It was -- it would be a discussion with counsel,
13 given the complexity of the agreements.

14 Q But as a factual matter, you're not aware of any facts
15 that would support the termination of the CLO management
16 agreements except that there were trades that Mr. Dondero
17 didn't think were in the best interests of the Funds; isn't
18 that right?

19 A Yes. And because the belief was those trades weren't
20 maximizing value for the preference shareholders.

21 MR. MORRIS: I move to strike everything after the
22 word yes, Your Honor.

23 THE COURT: Granted.

24 MR. MORRIS: I have no further questions.

25 THE COURT: All right. Mr. Rukavina?

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1 MR. RUKAVINA: Your Honor, I'll reserve my questions
2 for my case in chief.

3 THE COURT: All right. Mr. Post, that concludes your
4 testimony for now. Stick around.

5 Mr. Morris?

6 MR. MORRIS: Your Honor, last witness, and I hope
7 it's rather brief, actually. The Debtor calls James Seery.

8 MR. RUKAVINA: Your Honor, may we have a brief
9 restroom break, all of us in this room, before we start the
10 next witness?

11 THE COURT: All right. We'll take a five-minute
12 restroom break. I know part of the long day is because of my
13 commitment at the lunch hour, but you all did estimate three
14 or four hours for this hearing, right? That's what I recall.

15 MR. MORRIS: We did.

16 MR. RUKAVINA: Your Honor, I was never consulted on a
17 time estimate. I had no idea that someone said three to four
18 hours.

19 THE COURT: All right.

20 MR. MORRIS: And part -- part of that is my fault and
21 the technological problems we had this morning, so I take
22 responsibility for that, Your Honor, and I sincerely
23 apologize.

24 THE COURT: Okay. Well, just so you know, we cannot
25 come back tomorrow. I've got two -- too booked today tomorrow

1 to come back, so --

2 MR. MORRIS: I don't expect Mr. Seery to be more than
3 about 15 minutes.

4 THE COURT: Okay. We'll take a five-minute break.

5 THE CLERK: All rise.

6 (A recess ensued from 3:22 p.m. until 3:32 p.m.)

7 THE CLERK: All rise.

8 THE COURT: All right. Please be seated. I wanted
9 to clarify one thing I said, just so no one is confused. I
10 know that originally you had today, Wednesday, and Thursday,
11 26th, 27th, and 28th, for confirmation. So if anyone thought,
12 oh, we're coming back tomorrow on this if we don't finish,
13 because originally you had all three of those days, you know,
14 as soon as we continued the confirmation hearing, we started
15 filling in Wednesday. So we have three different Chapter 11
16 case matters set tomorrow. And so it was, you know, you give
17 up time and we have people usually wanting to get that time,
18 so that's what happened.

19 But anyway, people, we'll talk fast and we'll get it done
20 today, right?

21 MR. RUKAVINA: Your Honor, my -- Your Honor? Oh,
22 wait. I need to --

23 THE COURT: Ooh, it sounds like you're in a cave.
24 Let's get those headphones on.

25 MR. MORRIS: I promise to be as quick as I can, Your

1 Honor.

2 THE COURT: Okay. Mr. Rukavina, were you trying to
3 say something?

4 MR. RUKAVINA: I was, Your Honor. Can you hear me?

5 THE COURT: Yes.

6 MR. RUKAVINA: This darn video. Too many -- Your
7 Honor, we have an agreed TRO that goes through February the
8 15th. And I'm certainly not suggesting taking any more of the
9 Court's time than is necessary, but I cannot commit to
10 finishing today, especially because Mr. Morris has taken so
11 much time. So I think we will do our best, but I just want
12 the Court to know that there's no urgency to this, and if we
13 have to come back at some point after Tuesday or Wednesday,
14 there's no possible harm to the Debtor.

15 MR. MORRIS: Your Honor, it's my hope that we can get
16 this done, and I think the sooner we begin the better.

17 THE COURT: Okay. Well, we're going to try to get it
18 done. All right, Mr. Seery. You've called Mr. Seery to the
19 stand now?

20 MR. MORRIS: Yes, Your Honor. The Debtor calls James
21 Seery.

22 THE COURT: All right. Mr. Seery, please raise your
23 right hand.

24 JAMES P. SEERY, DEBTOR'S WITNESS, SWORN

25 THE COURT: All right. Thank you.

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1 MR. MORRIS: May I proceed?

2 THE COURT: You may.

3 MR. MORRIS: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. MORRIS:

6 Q Good afternoon, Mr. Seery. Can you hear me okay?

7 A I can, yes.

8 Q Okay. Let's just cut to the chase here. You're the CEO
9 of the Debtor; is that right?

10 A That's correct.

11 Q And in that capacity, do you understand that the Debtor is
12 party to contracts pursuant to which it manages certain CLO
13 assets?

14 A Yes.

15 Q And are you personally involved in the management of those
16 assets?

17 A Yes.

18 Q Do you have any prior experience managing other people's
19 money or other people's assets?

20 A Yes.

21 Q Can you please explain to the Court your experience and
22 your knowledge as to investing other people's money?

23 A Yes. I was a finance lawyer -- I'll go quickly, if it's
24 okay. I can fill in later, if you like. I was a finance and
25 bankruptcy lawyer for ten years before I went to Lehman on the

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1 business side in 1999.

2 In that role, I started immediately in distressed
3 investing. I worked as part of a team of analysts and traders
4 to build distressed positions in prop (phonetic) business,
5 trading Lehman Brothers balance sheet at the time. This was
6 in 1999 and 2000. We were one of the most significant
7 investors on the Street, and I was part of that team, and a
8 leading part of the team, putting on significant investments
9 of our balance sheet, which was Lehman's money, into different
10 kinds of stressed, distressed, high yield investments. That
11 included bonds, that included loans, unsecured, subordinated.
12 Sometimes equity. Typically, we stayed in credit, but a lot
13 of this was very distressed credit, which often ended up as
14 reorg equity.

15 After that, I began running different teams for making
16 distressed loans to companies that no one else would lend
17 money to. These investments were significant, anywhere from
18 fifty to a billion dollars. Some of the largest transactions
19 in the world at the time were transactions I ran, like a
20 rescue loan to PG&E for a billion dollars. That was in 2000.

21 After that, I continued to grow my career there, running
22 distressed investments. In 2005, I took over the loan
23 business at Lehman. That included all high-grade loans, high-
24 yield loans, trading and sales of those loans; managing that
25 portfolio, which was in excess of \$10 or \$20 billion,

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1 depending on the time; exposure both in committed transactions
2 as well as funded loans; the hedging of that portfolio;
3 traders and salespeople working for me. In addition, I had
4 significant responsibility for the distressed book, as well as
5 all restructuring business at Lehman.

6 After Lehman, I -- and I was one of the people who sold
7 Lehman -- I became a senior investing partner at RiverBirch
8 Capital. We were about a billion and a half dollar long/short
9 investor, mostly stressed and distressed, but a lot of high-
10 grade trades as well, particularly in preferred stocks. That
11 was a global business, but primarily U.S., Europe, some Asian
12 investments as well.

13 Since then, I've gotten to Highland. I've been
14 responsible for Highland's investments. After the first
15 quarter, when the performance managed by Mr. Dondero was
16 absolutely disastrous -- we lost about \$80 million in equity
17 securities, positions that he managed, about \$50 million in
18 the Select Equity Fund, and about \$30 million in the -- in the
19 Highland internal account. After Jefferies seized the Select
20 account, I took over the --

21 A VOICE: I think Mr. Seery has sort of gone beyond
22 the question of his background.

23 THE WITNESS: He's asked me if I was experienced in
24 investing other people's money. I was giving that background.
25 But we -- I can stop or I can keep going, if you like.

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1 THE COURT: Okay. If that was an objection, --

2 MR. MORRIS: Let's --

3 THE COURT: -- I overrule it. Go ahead.

4 THE WITNESS: I've been managing that portfolio. In
5 addition, after Mr. Dondero left, but I actually started
6 looking at it before that, started taking over the CLO
7 portfolio, or taking a look at it, frankly. We have a -- we
8 have an experienced professional sitting on top of it, Hunter
9 Covitz, who manages the day-to-day exposure. But those
10 portfolios -- we call them CLOs, Your Honor, but I think
11 you've heard testimony before, they're not really. Acis 7 is
12 a CLO. The 1.0 CLOs are very old investment vehicles that are
13 primarily structured as, right now, closed-end investment
14 funds. They don't have the typical diverse portfolio of loans
15 that a CLO has. They have mostly reorg equity or positions in
16 real estate and in MGM. So the -- the securities we've been
17 talking about in these trades are publicly-traded liquid
18 securities that Highland took as post-reorganization equity.

19 Q Thank you, Mr. Seery. Let's cut to the chase on the AVYA
20 and the SKY. Nobody seems to have asked you this question,
21 but did you -- have you looked to sell AVYA and SKY securities
22 since the time that Mr. Dondero left in October?

23 A I have, yes.

24 Q Can you please explain to the Court your investment
25 rationale, the reason why you wanted to sell -- let's just

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1 take them one at a time. Let's start with AVYA. In the last
2 couple of months, why have you wanted to sell AVYA?

3 A Well, the original impetus to sell AVYA came from Mr.
4 Covitz when it started moving up as a post-reorg security in
5 the communications space that had -- had really performed
6 extremely poorly post its Chapter 11. Mr. Covitz over the
7 summer felt we should start lightening up on that position. I
8 agreed. He did that. And Mr. Dondero eventually cut him off.

9 As it got to the fall, what I did was I got Mr. Covitz, as
10 well as then the analyst -- the analyst on that is Kunal
11 Sachdev. That's the Highland analyst on the position -- as
12 well as Joe Sowin and Matthew Gray, who's another senior
13 analyst. And I looked at all of the equity positions in the
14 CLOs and wondered why we had them. What was the view? Were
15 they worth keeping?

16 Primarily, the ones we looked at were four of the post-
17 reorg equities that were liquid. A company called Vistra, a
18 company called Arch Coal. Vistra is the old TXU, a well-known
19 bankruptcy. Arch Coal, another well-known bankruptcy. Avaya,
20 a bankruptcy; and Sky Champion, a less -- less-known
21 bankruptcy but came out of there.

22 Mr. Gray is the analyst on Vistra and Arch. We
23 determined, based upon his recommendations, not to sell those.
24 Mr. Sachdev was the analyst on Avaya, and he believed that it
25 had reached its peak, and even though it could continue to go

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1 up or down -- stocks often do that -- he did not think that
2 the value was there. His recommendation was to sell.

3 Mr. Sowin was in those meetings. Prior testimony to the
4 contrary or any statements that were said before are
5 completely false, they're completely made up, so I know it's
6 frustrating and I apologize for -- for being frustrated.

7 So we decided that we would sell the Sky Champion. A
8 pretty simple answer. Highland didn't have an analyst.
9 Literally didn't have an analyst. Nobody had a view as to
10 what the stock was. It just sat in there, in two CLOs,
11 without anybody paying any attention to it.

12 I had Matthew Gray take a look. He felt that it was at
13 fair value. I did my own work on it, felt it was at fair
14 value, notwithstanding some good tailwinds in -- secular
15 tailwinds in the home building space, and determined that that
16 CLO should sell those securities.

17 Q Thank you, sir. Prior to his departure at Highland, did
18 Mr. Dondero have responsibility over the management of any of
19 the CLO assets?

20 A He did, yes.

21 Q And do you understand, do you know whether Mr. Dondero
22 sold AVYA securities on behalf of the CLOs and on behalf of
23 the Funds during the time that he was employed as the
24 portfolio manager from January until October 2020?

25 A I do. And he did sell those securities. The chart you

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1 put up, based upon our business record, is accurate, and he
2 engaged in significant sales of those securities throughout
3 the year.

4 Q Okay.

5 MR. MORRIS: Can we please put upon Demonstrative #1?

6 BY MR. MORRIS:

7 Q Okay. And can you just explain to the Court what this
8 document is?

9 A It's a trade report, one of Highland's -- this shows the
10 whole platform, so it's the aggregate sales. The name of the
11 email -- I apologize, I forgot the system; it just left my
12 mind. But the email you saw before is anybody on the platform
13 used for various trades if they're part of a trading group.
14 And that's to make sure that, across the portfolio, in its
15 corporate platform, you aren't running into either compliance
16 problems or allocation problems that could lead to a
17 compliance problem.

18 Q So this shows sales of Avaya on these particular dates.
19 The trade is -- the trade symbol is AVYA. This is a liquid
20 security. Trades in, you know, liquid equity markets. I
21 believe its average trading volume is somewhere about a
22 million and a half a day, approximately. So you have a trade
23 date. You have the type of transaction. It could be a buy or
24 a sell. These are all sales. The quantity. And then the
25 price. And then it would have the Fund, and then the

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1 aggregate dollars, which is simply multiplying the price times
2 the quantity.

3 Q And if we just scroll down to the end of the document,
4 October 9th, is that around the time that Mr. Dondero left
5 Highland?

6 A Right around that time. This was coming into a number of
7 hearings that we thought it was most important to have Mr.
8 Dondero depart, particularly in light of some of the positions
9 that he and his companies were taking vis-à-vis the Debtor.

10 MR. MORRIS: Can we put up Demonstrative Exhibit #2,
11 please?

12 BY MR. MORRIS:

13 Q Can you explain to the Court what this is?

14 A Uh, --

15 MR. MORRIS: And again, just for -- just for the
16 record -- sorry to interrupt, Mr. Seery -- the backup for this
17 information can be found at Debtor's Exhibits BBBBB to SSSSS

18 BY MR. MORRIS:

19 Q Go ahead, sir. Could you explain to the Court what this
20 is?

21 A Yeah. This is just a pretty straightforward chart showing
22 the bars being sales and the lines being the -- the closing
23 sale price of a buy on that day. And so you can see, you
24 know, with the market fallout in the early part of the year,
25 AVYA hit a low, but like most of the securities in the market,

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1 it has come back very strongly. And you see Mr. Dondero's
2 trades earlier in the year, the rest of it during the middle
3 part of the year, sales in the third quarter, and then, when
4 he's gone, I began selling in November and December.

5 Q Now, so is it fair to say that Mr. Dondero and the
6 Defendants didn't completely impede and stop the Debtor from
7 selling AVYA shares?

8 A That's fair. What -- there's a little bit of confusion.
9 The way the trading desk worked previously is that you have
10 these separate companies but they're not really separate
11 companies. HCFMA is populated by about seven employees. Many
12 of them have functions across a number of different companies.
13 HCFMA exists solely because Highland funds it. They haven't
14 paid fees of about three million bucks this year. They owe
15 \$10 million related to a disastrous bailout of what was an
16 open-end fund called Global AI a couple years ago where the
17 SEC, you know, came in and took significant action, almost
18 shut significant parts of Highland down. And these traders do
19 the trading of all the equities across the platform.

20 So I typically would call them, and this is how we worked
21 in the spring when I took over the internal account after the
22 seizure by Jefferies of Mr. Dondero's management of the Select
23 Equity account. I would work with Joe Sowin as the trader,
24 make decisions on what we wanted to do for the day, he would
25 execute those trades by going out in the market with a broker,

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1 selling them to -- to the dealer on the other side, run it
2 through our automated system, and then the trades get closed
3 with the back office.

4 So there's the trade, which is your agreement to buy or
5 sell at a particular dollar price. That gets inputted into
6 the OMS system, and then from there it's the back office takes
7 over, and then ultimately securities are delivered versus
8 payment to the counterparty.

9 Q Okay. And can you just describe, you know, in one or two
10 sentences, your interpretation of this chart and how your
11 sales and the green bars compare to Mr. Dondero's sales and
12 the brown bars?

13 A Well, the two simple obvious answers are, one, they're
14 smaller, and two, they're at higher prices.

15 Q Okay. You also traded, since Mr. Dondero's departure,
16 securities known as SKY; is that right?

17 A That's correct. It's Sky Champion Corp. The ticker is
18 SKY.

19 Q And did Mr. -- to the best of your knowledge, Dr. Mr.
20 Dondero trade in SKY securities prior to his departure?

21 A I don't believe so. As I said earlier, we didn't appear
22 to have an analyst on that for some time. I don't even know
23 how far back it goes. It was a bit of an orphan security
24 sitting in the portfolio. It's only -- it was only in two of
25 the CLOs.

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1 Q Okay.

2 MR. MORRIS: Can we please put up Demonstrative #3,
3 please? Okay.

4 BY MR. MORRIS:

5 Q And can you just explain to the judge what's depicted on
6 this page?

7 A Again, similar to the last chart, you have the dollar
8 price of the security at the close each day, throughout the
9 year, and then the green bar showing where we began to sell
10 securities for those CLOs.

11 Q And so, again, is it fair to say that Mr. Dondero and the
12 Defendants haven't completely stopped the Debtor from engaging
13 in SKY transactions?

14 A That's correct. What we did was the so-called workaround
15 previously mentioned, was that we decided that I would have to
16 do the trading directly. So I'd literally look at the stock
17 each day, talk to the broker at Jefferies, determine what
18 level to sell at, communicate with him throughout the day,
19 work through transactions. Then he reports in whether he's
20 been able to sell and execute on our behalf. When he's done
21 that, then we have the back office manually enter the trades,
22 as opposed to doing it from the automated trading desk, and
23 then have those trades close. So, so far, knock on wood, we
24 haven't failed on any trades.

25 Q Okay.

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1 MR. MORRIS: We can the demonstrative down, please.

2 BY MR. MORRIS:

3 Q Just two more topics here, sir. Can we talk briefly about
4 what efforts, if any, the Debtors have made to avoid this
5 litigation? I'll just ask them one at a time. Has the Debtor
6 made any attempt to transfer the CLO management agreements to
7 the Defendants or to others?

8 A Well, our original construct of our plan was to do that.
9 We've since determined, when we tried to do that, we got
10 virtually no response from the Dondero interests. The
11 structure of the original thought of the plan was if we didn't
12 get a grand bargain we would effectively transition a
13 significant part of the business to Dondero entities, they
14 would assume employee responsibilities and the operations, and
15 then assure that the third-party funds were not impacted.

16 As I think I testified on the -- I can't recall if it was
17 the deposition or my prior testimony in court -- Mr. Dondero,
18 true to his word, told me that would be very difficult, he
19 would not agree, and he has made that very difficult.

20 So we examined it. We've determined that we're going to
21 maintain the CLOs and assume them. But we originally tried to
22 contemplate a way to assign those management agreements.
23 We've had --

24 Q All right.

25 A -- significant discussions with the CLO Issuers, and

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1 they're supportive of us retaining them.

2 Q Okay. You were on the -- you've been participating or
3 listening in to the hearing throughout the day; is that right?

4 A I have, yes. I apologize. I didn't leave the screen on
5 because I didn't want to suck up bandwidth.

6 Q Are you familiar with all of the K&L Gates letters that
7 that were reviewed today?

8 A I am, yes.

9 Q Did the Debtor request that the Defendants withdraw those
10 letters?

11 A Yes, we did.

12 Q Had the Defendants withdrawn those letters, might that
13 have avoided this whole litigation?

14 A I think it would have. What we wanted to have here is a
15 withdrawal of the letters and an agreement by the clients for
16 the -- the K&L Gates clients that they wouldn't interfere with
17 the operations of the Debtor and our drive towards a plan.
18 They could take their legal positions and object to the plan,
19 if they like, but interfering on a day-to-day basis was
20 unacceptable to us in terms of trying to operate this business
21 in the most efficient manner.

22 We specifically requested that they do that. This is, I
23 don't think, lost on anybody, certainly not on me in my
24 experience here for years: These entities are all dominated
25 and controlled by Mr. Dondero, and each of these attacks is

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1 specifically coordinated for the purpose of diverting the
2 Debtor, causing confusion, and forcing us to spend estate
3 resources.

4 Q Do you know if the Debtor also asked the Defendants to
5 avoid this whole injunction proceeding by simply filing their
6 motion to lift the stay and see if they could actually win a
7 motion to terminate the contract?

8 A Well, what we did was we contemplated the best, most
9 efficient way out, and it was either withdrawing the
10 agreement; if they didn't agree, then we'd said you should
11 file your stay motion immediately and let's have this
12 determined. We told them, short of that, if they weren't
13 willing to do that, then we would have to put this in front of
14 the Court to try to make sure that we could operate the
15 business.

16 Q All right. So, just to summarize, you attempted to sell
17 the CLO management agreements, but were unable to do so; is
18 that right?

19 A I would say assign. We would have looked for a payment,
20 there is a cure payment that we have to make, but we didn't
21 we didn't conduct an auction for the CLO assets.

22 Q And to the best of your knowledge, the Defendants never
23 withdrew the letters; is that right?

24 A They did not.

25 Q And to the best of your knowledge, the Debtors -- the

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1 Defendants never brought their contemplated lift stay motion,
2 right?

3 A They have not, no.

4 Q And so why did the Debtor bring this action?

5 A Well, quite clearly, to try to prevent the managers and
6 Mr. Dondero and the Funds from interfering with the way that
7 we operate the business. We intend to continue to manage the
8 CLOs, we intend to assume those contracts, we intend to manage
9 them post-confirmation, after exit from bankruptcy. And
10 causing confusion among the employees, preventing the Debtor
11 from consummating trades in the ordinary course, deferring
12 those transactions, we thought put the estate at significant
13 risk, in addition to the cost.

14 Q Did you hear Mr. Rukavina in the opening suggest that
15 these might, in fact, be money-losing contracts?

16 A I did, yes.

17 Q Why would the Debtor want to assume money-losing
18 contracts?

19 A They're not money losing contracts.

20 Q And why, why do you say that?

21 A They generate fee income. So the fees on each of these
22 CLOs get paid to the Debtor. Now, not all of these CLOs, as I
23 mentioned earlier, are -- none of them are ordinary CLOs,
24 other than Acis 7. But not all -- because they don't all have
25 liquid assets that are able to pay their fees each quarter,

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1 some are deferred. There are some CLOs that will probably
2 never pay any deferred fee because they are underwater. Those
3 are not CLOs that Mr. Dondero or the Funds own any of. That's
4 not really a surprise. But we will continue to manage those
5 and look for ways to exit for those investors who are
6 noteholders who are underwater in those CLOs.

7 Q Okay. Can you describe for the Court the Debtor's
8 contentions as to how the conduct that has been adduced
9 through today's evidence, how is the Debtor harmed by Mr.
10 Dondero's interference in the trades and the sending of these
11 letters?

12 A I think it's clear in terms of operational risk. Being
13 forced to construct a workaround to consummate trades that we
14 think are in the best interest of the Funds.

15 It's telling not only that neither Mr. Dondero nor Mr.
16 Sowin nor -- Mr. Sowin was on the calls and agreed to the
17 analyst view, by the way -- nor anybody from MHF ever asked me
18 a question, their lawyers in the deposition never asked me why
19 we were selling these securities. They simply want to get in
20 the way, cause additional risk to the estate, and cause
21 additional exposure with respect to legal fees, divert our
22 attention from trying to consummate the case. I think that's,
23 in my opinion, that's pretty clear.

24 Q Is there any concern on the part of the Debtor that
25 that Mr. Dondero's emails and conduct is creating uncertainty

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1 among the staff as to who's in charge?

2 A I think they did initially, and if they continued, they
3 would. Right now, the workaround is working pretty well. We
4 still do keep Mr. Sowin on the emails to make sure that, you
5 know, from a compliance perspective, that our sales, he knows
6 about; that we're not stepping on each other's markets, if you
7 will; that we're not getting in the way that -- in the way if
8 he wants to sell assets from a different MHF other managed
9 asset holding, but we do have a workaround that works right
10 now.

11 I think the biggest risk is, because it's much more
12 manual, you have risk of so-called fat-finger trades, where
13 you think you're selling a thousand and you sell 10,000, you
14 think you're executing a sale and you're executing a buy, you
15 think you're executing from an account that has the securities
16 and end up selling short from an account that doesn't. So
17 we've got to be very careful of that, but the team is doing
18 that now. There certainly was confusion at the start.

19 Q And can you just explain to the Court your view as to how
20 the Debtor is able to -- how the Debtor will be able to
21 service the contract on a go-forward basis?

22 A The CLO contracts?

23 Q Yes.

24 A We'll have a team of folks able to manage these assets
25 with professionals that are experienced credit analysts,

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1 equity analysts. I think we'll be able to manage this --
2 these assets in a pretty straightforward manner. It's not
3 going to be very difficult.

4 Q Has the Debtor been harmed through the diversion of your
5 personal attention as CEO in responding to all of this?

6 A I like to think that I can juggle a lot of different
7 things. I would prefer not to have to be looking at the
8 securities levels each day and feeding out securities that we
9 determine to sell through the broker at Jefferies, who,
10 notwithstanding, is doing a great job. It's the job of the
11 trader to actually do that and day-to-day -- throughout the
12 day monitor the markets and look for the best place to sell.

13 So do I think I'm getting the best execution? I think the
14 trader at Jefferies is excellent. Do I think if a trader on
15 the Highland side was involved every step of the way, I think
16 it would be better.

17 Q Have the Debtor's professionals' attention and resources
18 been diverted to deal with all of this stuff?

19 A That -- I think that's -- that's quite clear as well.
20 It's a significant expense.

21 Q Okay.

22 MR. MORRIS: Your Honor, I have no further questions
23 of this witness.

24 THE COURT: All right. Mr. Rukavina?

25 MR. HOGWOOD: Your Honor, if you please, Lee

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1 Hogewood from North Carolina. You've admitted me *pro hac*
2 vice. If I may do cross-examination, I would appreciate it.

3 THE COURT: All right. Go ahead.

4 MR. HOGEWOOD: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. HOGEWOOD:

7 Q Mr. Seery, let me ask you about the letters that came from
8 our firm, and especially from me, beginning on December 22nd.
9 I think you spoke about those generally. If you need them to
10 be called up, I think my questions will be crisp as to the
11 letters generally, but we could certainly look at them
12 specifically, if need be.

13 There was initially a letter dated December 22nd, 2020,
14 that's Debtor's Exhibit DDDD, at Docket 39. I take it you've
15 read that letter?

16 A I have, yes.

17 Q And it's fair to say that was a request you had seen
18 before?

19 A I don't think that's fair to say, no.

20 Q You had not seen a request to discontinue trades until the
21 confirmation hearing?

22 A I don't believe so, no.

23 Q Okay. So that, that was the first time a request had been
24 made not to trade in the CLO securities prior to confirmation?

25 MR. MORRIS: Objection to the form of the question.

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1 THE COURT: Overruled.

2 THE WITNESS: I --

3 THE COURT: Go ahead. You can answer.

4 THE WITNESS: I don't recall you sending me a letter
5 before that, but I -- if you have, then I apologize. I
6 thought I was pretty familiar with them, but I don't recall
7 you sending me that request previously.

8 BY MR. HOGWOOD:

9 Q Okay. I'm sorry. That was the first request you had
10 received from me, is that -- that's correct?

11 A Yes.

12 Q But there had been prior requests of a similar nature?

13 A Not to my recollection. Is there a letter?

14 Q All right. Well, let me -- let me move on. You
15 weren't intimidated by my letter, were you?

16 A Was I intimidated by your letter? No, I was not
17 intimidated.

18 Q And it didn't cause -- the letter itself did not cause you
19 or the Debtor to alter your investment strategy?

20 A It did not, no.

21 Q And it did not cause you or the Debtor to refrain from
22 operating the company in the manner that you perceived to be
23 in its best interest?

24 A It did not.

25 Q It did not cause you to change any of your trading

1 decisions?

2 A No.

3 Q You and your counsel responded -- or, your counsel
4 responded to the letter a couple of days later; isn't that
5 correct?

6 A Yes.

7 Q And the response rejected the request that had been made
8 and demanded that the letter be withdrawn; is that right?

9 A Yes.

10 Q So the range of communication is a set of lawyers
11 representing adverse parties asserting their respective
12 positions? Is that a fair characterization of that set of
13 communications?

14 A No.

15 Q Okay. Would you characterize it differently?

16 A Yes.

17 Q All right. How so?

18 A I believe you sent a letter with no good-faith basis,
19 knowing what the contracts say as an experienced lawyer,
20 knowing there was not cause, yet still making the same
21 threats, basically couching them as a request. But I don't
22 think there was any good-faith exchange of ideas. No one even
23 asked me why I was making the trades. I think you were aware
24 of that.

25 Q You -- but you testified that, nonetheless, the letter did

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1 not cause you to conduct yourself in any other manner than you
2 would have conducted had you not received the letter; isn't
3 that right?

4 A That's correct.

5 Q So I think there's some confusion, then, and I just want
6 to clear this up. There was earlier testimony, both at your
7 deposition, that -- that my clients actually interfered with
8 and caused trades not to occur on or around December 22nd and
9 23rd of 2020. And that's not correct.

10 MR. MORRIS: Objection. Your Honor, the evidence is
11 in the record.

12 MR. HOGWOOD: Okay. Well, let me --

13 THE COURT: All right. You're going to have to
14 rephrase.

15 BY MR. HOGWOOD:

16 Q Yeah. Let me -- let me say it differently. Focusing
17 solely on December of 2020, every trade that you initiated
18 closed; isn't that correct?

19 A Every trade. Yes. We did not fail one trade.

20 Q Okay. And so the issue that you have raised in your
21 pleading is that there were -- there was an expectation that
22 employees of my clients would book trades, which is
23 essentially a backroom operation, after the trade has closed.
24 Isn't that right?

25 A That's incorrect.

1 Q Okay. So, once again, let me just get -- there were no
2 trades that you initiated that failed to close; is that right?

3 A That's correct.

4 Q And nothing that was done by the Defendants resulted in a
5 trade that you wished to make in December of 2020 to fail to
6 occur or fail to close; isn't that right?

7 A That incorrect.

8 Q So you initiated a trade that did not close?

9 A Yes.

10 Q In December of 2020? And when was that?

11 A I believe that's the case, yes.

12 Q And specifically what trade did not close that you
13 initiated?

14 A I'd have to check the notes, but the specific trades were
15 my attempt to initiate the trade with the desk. Then the
16 trading desk goes into the market and makes the sale. Once
17 it's inputted into the order management system, referred to as
18 an OMS, then it gets processed for closing. In November and
19 in December, Mr. Dondero instructed those employees not to
20 initiate those trades. So there was never an agreement. When
21 I initiated a trade, which was the workaround you saw referred
22 to, I quite simply called Jefferies directly and I had the
23 back-office folks manually input it instead of the trading
24 desk.

25 Sorry. I just wanted to make sure we cleared that up.

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1 Q No, just -- that -- that's helpful to understand. But I
2 think, focusing again solely on December, every trade you
3 initiated closed?

4 A Every trade that I actually went and made in the market
5 closed.

6 Q And indeed, if --

7 MR. HOGWOOD: I observed your demonstrative
8 exhibits, and if I could ask that the one related to the Avaya
9 trades be called up, Mr. Morris. is that possible?

10 MR. MORRIS: Yeah, sure. Is that the first one with
11 Mr. Dondero's trades, or do you want the chart?

12 MR. HOGWOOD: The -- the -- I think it was your
13 Demonstrative #2 that showed the timeline of the trades.

14 MR. MORRIS: Yeah. You bet.

15 (Pause.)

16 MR. HOGWOOD: Thank you. Thank you very much.

17 BY MR. HOGWOOD:

18 Q So, just so I understand this document, the bottom axis is
19 the passage of time, and when we get into the period between
20 November of 2020 and the end of 2020, 12/31/2020, there are --
21 there's a green bar that has the numbers 50,000 at the top of
22 it. That reflects what, Mr. Seery? The number of shares or
23 the dollar amount of the trades?

24 A Number of shares.

25 Q And while this is not date-specific, do you know when

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1 those sets of \$50,000 trades happened? Or --

2 A I don't --

3 Q -- 50,000 shares trades happened?

4 A I don't know the specific dates off the top of my head,
5 no.

6 Q But looking at it just in comparison to the calendar, that
7 -- that's awfully close to December 22nd and 23rd, is it not?

8 A It appears to be, yes.

9 MR. HOGWOOD: And Mr. Morris, if the I guess it's
10 the SKY document could be pulled up as well? I just want to
11 be clear --

12 MR. MORRIS: Demonstrative #3, please.

13 MR. HOGWOOD: Yes. Thank you.

14 BY MR. HOGWOOD:

15 Q The timeline on this demonstrative is similar, is it not?

16 A Yes, it is.

17 Q It's showing trades by day throughout the course of the
18 year?

19 A That's correct.

20 Q And again, there are a significant number of trades in SKY
21 on what looks awfully close to the few days before Christmas
22 of 2020; is that right?

23 A That's correct.

24 Q Okay. And this is the period of time that we're talking
25 about there being interference by the Defendants' employees;

1 is that right?

2 A Yes.

3 Q Okay. I'll move on. So, the next letter in question was
4 one that came the day after, on December 23rd. Again, that
5 was a letter from me to your counsel. Do you recall that
6 letter?

7 A Yes.

8 Q And the letter of the 23rd, if we need to look at it, is
9 the EEEE, Docket 39. You read that letter as well?

10 A Yes.

11 Q And you disagreed with the position taken in the letter?

12 A I'm trying to remember the specific position in that one.
13 Was that the one threatening to try to terminate the CLOs
14 without having checked whether there's cause? I just don't
15 recall.

16 Q Why don't we call it up, if we can?

17 MR. HOGWOOD: Mr. Morris, if you could help us,
18 because it's one of your exhibits, that would be great. But
19 Ms. Mather has got it up, so that's great.

20 BY MR. HOGWOOD:

21 Q Mr. Seery, can you see the December 23rd letter?

22 A I can, yes.

23 Q And I think you referred to it as a threat to terminate
24 the portfolio management contracts?

25 A I wasn't sure. That's why I was just asking if this was

1 that one. I don't -- I don't recall.

2 Q Right. And if you review the first page and the second
3 page, does that confirm your recollection that that is the one
4 related to portfolio management contracts?

5 A I can't see the second page. I believe it is. I'm not
6 trying to --

7 Q Yeah, no, --

8 A If you represent, I'll accept it.

9 Q Take your time.

10 A (Pause.) Yes.

11 Q Okay. And I think you already said this: You strenuously
12 disagreed with the positions stated in the letter?

13 A Yes.

14 Q But again, you were not intimidated by the letter?

15 A Intimidated? No.

16 Q The letter didn't cause you to change your investment
17 strategy?

18 A No.

19 Q It didn't cause you to trade or not trade in a particular
20 manner?

21 A No.

22 Q You continued to function the Debtor's operations as you
23 deemed appropriate?

24 A Yes.

25 Q To your knowledge, no CLO or Issuer has taken any steps to

1 remove the Debtor as the portfolio manager?

2 A The CLO or the Issuers?

3 Q Yeah. No one's -- no one's taken a position that you
4 should -- that the Debtor should be removed as a portfolio
5 manager?

6 A Not -- not from the Issuers, no.

7 Q And -- or, I'm sorry. And so when you -- when you brought
8 a distinction between the Issuer and the CLO, are you -- are
9 you referring to CLO Holdco?

10 A No.

11 Q Okay. Has a CLO taken steps to remove the Debtor as a
12 portfolio manager?

13 A The CLO is the Issuer.

14 Q Okay.

15 A So the answer is no.

16 Q Okay. So no one has -- no one has acted to take any -- to
17 do anything as it relates to the removal of the Debtor as the
18 portfolio manager?

19 MR. MORRIS: Objection to the form of the question.

20 THE COURT: Overruled.

21 THE WITNESS: I'm quite sure the CLO Issuers haven't,
22 as they agreed and we've been working with them on an
23 assumption. With respect to what your clients have done, I
24 don't know.

25 BY MR. HOGWOOD:

1 Q But you don't have any evidence that my clients have taken
2 any action in violation of the automatic stay to -- to move or
3 encourage the removal of the Debtor as the portfolio manager,
4 do you?

5 A Other than the letter? No.

6 Q Other than the letter between me and your counsel?

7 A Correct.

8 Q All right. So, and that letter expressly states that any
9 of those actions that would be taken are subject to the
10 automatic stay and the Bankruptcy Code; is that right?

11 A That's correct.

12 Q And as we sit here today, the Debtor is not in breach of
13 any contract with any of the Issuers; is that right?

14 A That's correct.

15 Q And the letter didn't cause the Debtor to breach any
16 contract with any Issuer, did it?

17 A Did not.

18 Q And I think you've already testified today and you also
19 testified in deposition that you anticipate that the -- all of
20 the CLOs will consent to the assumption of the portfolio
21 management agreements in the context of confirmation; is that
22 right?

23 A Yes.

24 Q And the plan supplement that you recently filed, you
25 provide a mechanism by which the issue of for-cause

1 termination is to be resolved, do you not?

2 A I don't recall if there's a specific provision in the plan
3 supplement. We certainly have, either in the plan or in the
4 plan supplement, a provision related to the gatekeeper
5 function.

6 Q And that's similar to the settlement that you entered into
7 with CLO Holdco in terms of resolving both their objection to
8 confirmation and the lawsuit against them today; is that
9 right?

10 A I believe it's similar.

11 Q Okay. And the gatekeeper is the Bankruptcy Court to
12 determine, short of a full-blown trial, that if cause exists,
13 isn't that correct, under the plan?

14 A Among other functions, yes.

15 Q So if the Court confirms the plan, then the concerns that
16 you have are resolved by the gatekeeper function that is the
17 subject of this motion; is that right?

18 A I think it depends on the contents of the confirmation
19 order.

20 Q And if the Court denies confirmation, then the stay
21 remains in effect and the letter related to the removal of the
22 portfolio manager was expressly subject to the stay; isn't
23 that right?

24 A If the letter says it's subject to the stay? It does say
25 that, but it says other false things as well, so I'm not sure

1 -- I don't know exactly what you're asking me there.

2 Q All right. It wasn't a very good question, frankly.

3 Your counsel responded to the December 23rd letter as well
4 and demanded a retraction; isn't that right?

5 A Yes.

6 Q And that was sort of a separate (audio gap) with counsel?

7 A I'm sorry. You broke up for a second there, sir. I'm
8 sorry.

9 Q I'm sorry. That -- that' -- let's just skip that. You
10 had testified that neither letter was withdrawn?

11 A I believe that's correct, yes.

12 Q Are you familiar -- and -- are you familiar with the fact
13 that, in the response letters, your counsel insisted that
14 there be a response and withdrawal by not later than, I
15 believe, 5:00 on December 28th? Do you recall that?

16 A I don't recall that specifically, but I accept your
17 representation.

18 Q And do you know whether or not there was a response dated
19 December 28th?

20 A I don't believe there was a written response. I don't --
21 I don't recall.

22 Q All right.

23 MR. HOGWOOD: Ms. Mather, can you call up
24 Defendant's Exhibit 84, which is at Docket 45, please? Thank
25 you.

1 BY MR. HOGEWOOD:

2 Q So, Mr. Seery, have you ever seen this letter dated
3 December 28?

4 A I believe I have, yes.

5 Q And this letter was not attached to the complaint nor your
6 declaration nor the request for a TRO or preliminary
7 injunction, was it?

8 A If you say it wasn't. I don't recall specifically.

9 Q Okay. So, you, by seeing this, you realize now there was
10 a response by the 28th. Is that right?

11 A Yes.

12 Q And in the -- let me just direct your attention to the
13 final sentence of the first paragraph. It says -- it makes
14 once again clear that the -- any efforts to remove the Debtor
15 as manager would be subject to applicable orders of the
16 pending bankruptcy case, provisions of the Bankruptcy Code,
17 and specifically, the automatic stay. Do you see that?

18 A I apologize. I don't see it. Which paragraph?

19 Q I'm at the very last sentence of the first paragraph.
20 There's a sentence that --

21 A (reading) Subject to applicable orders in the pending
22 bankruptcy case, provisions of the Bankruptcy Code,
23 specifically, the automatic stay.

24 I read that, yes.

25 Q Yes. Okay. There was some testimony about the letter

1 related to Mr. Dondero's eviction. I don't intend to belabor
2 that. But once again, that was a letter between counsel, was
3 it not?

4 A I believe it -- I believe it was. I don't recall
5 specifically now. I assume -- I assume all of these were
6 directed to counsel.

7 Q Right. And again, the fact that counsel wrote a letter
8 requesting that the eviction not occur did not change your
9 process and you proceeded with the eviction, did you not?

10 A I think the letter came after Mr. Dondero was no longer
11 permitted. Eviction is an odd word. He was no longer an
12 employee, so employee not being able to come into the office
13 and hang around and disrupt business isn't exactly an
14 eviction. So I disagree with your characterization there.

15 Q Okay. Well, so I'll just leave that. I mean, the --
16 since this exchange of letters, are you aware -- I mean, there
17 was some testimony about the Debtors presenting the Defendants
18 with the choice of either filing a motion for relief from stay
19 or this injunction proceeding would be brought. Isn't that
20 right?

21 A Yes.

22 Q And no motion for relief from stay was filed, and
23 therefore this injection proceeding was brought. Is that
24 correct?

25 A Yes.

1 Q So the other thing that you know was filed by the
2 Defendants was an objection to confirmation, which was due on
3 January 5th of 2020, correct?

4 A I'm sorry, Mr. Hogewood. You broke up. Did you say the
5 other paper or pleading that was filed?

6 Q The pleading that was filed by the -- these who are
7 Defendants as well as other parties to this case was an
8 objection to confirmation, the deadline for which was January
9 5, 2020. Are you familiar that an objection to confirmation
10 was filed?

11 A I'm familiar that one was filed, yes.

12 Q And so the objection to confirmation raised many of these
13 same issues regarding the circumstances under which the
14 various CLO agreements could be assumed; isn't that right?

15 A I'm not aware of the specifics of the objection.

16 Q Okay. But nonetheless, my client was under no obligation
17 to initiate yet another motion or lawsuit or pleading against
18 the Debtor beyond objecting to confirmation, was it?

19 A An obligation? No.

20 Q And since the objection to confirmation has been filed,
21 there have been a number of pleadings filed in the case. We
22 obviously were required to respond to the motion for
23 preliminary injunction, and it says there's been an objection
24 filed to that. Are you aware of that?

25 A That -- that you objected to the preliminary injunction?

1 Q Yes.

2 A Yes, yes, I'm aware of that.

3 Q And --

4 A I'm very aware.

5 Q And you're aware that there was a proposed settlement with
6 HarbourVest; is that correct?

7 A We have an approved settlement with HarbourVest.

8 Q Right. And there were objections filed to that particular
9 -- or, to that particular settlement agreement, were there
10 not?

11 A Yes.

12 Q But none of my clients participated in that objection, did
13 they?

14 A I don't recall the specifics of your clients versus the
15 other Dondero entities, but I'm certain Mr. Dondero
16 participated.

17 Q But the De... the parties that we represent did not object
18 to the settlement?

19 A I don't recall specifically.

20 Q Okay. And another motion that was filed was for an
21 examiner. Isn't that correct?

22 A I believe that's the case, yes.

23 Q Yeah. And my clients didn't join that motion, either?

24 A No. It's a bit of whack-a-mole, but they did not -- they
25 did not -- I don't -- I don't know. To be honest, I don't

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1 know if they did or not.

2 Q All right. Toward the end of your testimony, you were
3 giving some information about the value of these management
4 contracts in terms of income over the course of the coming
5 year or two. What is the projected revenue with respect to
6 these management contracts?

7 A Do you mean the CLO 1.0 management contracts?

8 Q Yes.

9 A They generate about four-and-a-half to five million
10 dollars a year, depending on the asset base in total, but
11 that's accrual, as I mentioned earlier. It doesn't all come
12 in in cash. It depends on the waterfall. Expect about two-
13 and-a-half to 2.7 million to come in per year during the
14 course of the projected time period.

15 (Echoing.)

16 Q Have you done any sort of profitability analysis on the
17 management contracts?

18 A Not specifically on those contracts, no. We look at the
19 --

20 Q Okay.

21 A -- aggregate of the Debtor's receipts versus its costs.

22 Q Can you -- so, --

23 MR. HOGWOOD: Ms. Mather, can you call up the
24 disclosure statement? This is Docket 1473. And in
25 particular, Page 176.

Seery - Cross

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1 BY MR. HOGEWOOD:

2 Q So, I'm, Mr. Seery, I'm trying to square the 779 for the
3 month ended -- month period ended in March '21 and no further
4 revenue coming in on management fees with what you just said.

5 A I'm not -- I'm not sure why. This should -- certainly
6 should have the management fees according to the CLOs if this
7 was included in the assumption of those. We have revenue,
8 they do generate revenue, they currently generate and they
9 will continue to generate.

10 Q But this is the disclosure statement approved by the
11 Court, right?

12 A Yes. I'll have to come back and check why that for the
13 year doesn't have it, unless we were assuming that we wouldn't
14 receive any into the -- into this vehicle. I just, I don't
15 know the answer.

16 MR. HOGEWOOD: Your Honor, that's all the questions I
17 have. Thank you very much.

18 THE COURT: All right. Redirect?

19 MR. MORRIS: Can we just leave this up on the screen
20 for a second, very quickly, for Mr. Seery? Can we put the
21 document back?

22 REDIRECT EXAMINATION

23 BY MR. MORRIS:

24 Q Mr. Seery, do you recall that the disclosure statement was
25 approved back in November?

Seery - Redirect

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1 A Yes.

2 THE COURT: Could you repeat the question? I
3 couldn't hear it.

4 MR. MORRIS: Yeah. That is -- I don't know if
5 somebody's phone is not on mute.

6 THE COURT: Yes. Please put your device on mute if
7 you're not the one talking. Okay. Someone did. Go ahead.

8 MR. MORRIS: Thank you.

9 BY MR. MORRIS:

10 Q Mr. Seery, do you recall that this disclosure statement
11 was approved back in November?

12 A Yeah. What I'd said earlier was that I'm not sure if the
13 -- this plan projection conforms with our decision to maintain
14 the CLO management contracts, and so there certainly should be
15 revenue, while it comes in quarterly on the management fee,
16 the base management fee. And it's not always -- each CLO is
17 not always able to pay it in cash. It will depend on our
18 ability to monetize assets, because they don't -- a lot of the
19 assets are not cash-generative. Some are. For example, the
20 Trussway loan is cash generative. The CCS loan is not.

21 But I'm just not sure why this doesn't show the management
22 fees at all. At least for the whole year, we certainly will
23 have them, unless this is prior to the determination to assume
24 those agreements.

25 Q Okay. So if the assumption in November was that the

1 agreements would be assigned, there would be no revenue shown.

2 Is that fair?

3 A That would have been the assumption prior to us

4 determining that we wanted to assume them, yes.

5 Q Okay. And do you recall whether the Debtor became more

6 convinced that it would assume the contracts rather than

7 assign them before or after the disclosure statement was

8 approved?

9 A I don't recall the specific timing, but a number of things

10 happened around this time. First, the Dondero entities were

11 unwilling to even engage on assignment because they were on a

12 much more aggressive, quote, blow up the place strategy.

13 That's Mr. Dondero's quote.

14 Number two, we settled with HarbourVest, and that

15 significantly increased the value of maintaining the CLO

16 management. The HarbourVest -- or the HCLOF entities own

17 significant preferred shares in the 1.0 CLO structures, and

18 having management of those and being able to monetize those in

19 accordance with the agreement, maximizing value for the

20 benefit of HCLOF, would be far, far better for the estate than

21 letting these assets just sit. We're not trying to drive the

22 price down, because we wouldn't be in the business of trying

23 to buy back those securities on the cheap. We're in the

24 business of trying to maximize value.

25 Q All right.

Seery - Examination by the Court

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1 MR. MORRIS: I have nothing further, Your Honor.

2 THE COURT: Any recross on that redirect?

3 MR. HOGWOOD: No, thank you, Your Honor. Appreciate
4 the opportunity to appear before you.

5 THE COURT: All right. Thank you.

6 Mr. Seery, before we let you go, I have a couple of
7 follow-up questions.

8 EXAMINATION BY THE COURT

9 THE COURT: These CLOs, I mean, you've said a couple
10 of times they're not really traditional CLOs, except for the
11 Acis 7 one. But I have this question. I've learned back in
12 the Acis case most of what I know about CLOs, I suppose. And
13 what the witnesses told me there were they typically had a 12-
14 year life, and then, yeah, there was some period, you know,
15 the first five years, seven years, something like that, where
16 it was in a reinvestment/refinancing phase, but then after
17 that, you know, we couldn't do that anymore and it was kind of
18 heading towards wind-down.

19 Anyway, my long-winded question is: Do these CLOs work
20 generally like that or not? Because you said they're
21 atypical.

22 THE WITNESS: They -- they --

23 THE COURT: Go ahead.

24 THE WITNESS: They used to.

25 THE COURT: Okay.

1 THE WITNESS: So these are extremely old. These go
2 back to 2006, '07, '08. These are very old CLOs. So they're
3 far beyond their investment periods. Some of them are coming
4 up on their maturities on their debt. Many of them don't have
5 any debt at all.

6 So you'll recall, Your Honor, that a CLO is a vehicle
7 where you take x-hundred million -- we'll use 400 for fun --
8 million dollars. You ramp up \$400 million of assets. You
9 sell off, for our purposes, \$350 million of securities. You
10 have the AAA securities, the AAs, all the way down. And then
11 you have these preference shares.

12 During a period of time, as cash is generated in the CLO,
13 the CLO is entitled to reinvest it. And that keeps it going.
14 And then it gets beyond its reinvestment period and it's in
15 what folks usually refer to as its harvest period. That's
16 when oftentimes, depending on where rates are, depending on
17 asset value, the rates for the debt obligations or the rate
18 you can receive on your assets, you may see refinancings or
19 resets. Otherwise, the CLOs begin to wind down. They have --
20 they don't have a life, like a partnership with a final date,
21 but there's maturities on the debt and then there's an
22 expectation that they would wind down.

23 These CLOs -- which typically CLOs only invest in
24 performing loans, and oftentimes, particularly Highland -- and
25 I could regale you with stories how Highland would take

1 virtually non-interest-bearing, seventh lien debt -- that's a
2 bit of an exaggeration -- but just to keep the fees going, and
3 not actually convert to equity. A lot of these, that wasn't
4 an option, so they've converted to equity. So I just have one
5 that I happen to have on my screen, Your Honor, Gleneagles.
6 The assets in Gleneagles (echoing) are 16 -- MGMs.

7 THE COURT: Okay. Someone needs to put their phone
8 on mute. All right. I'm sorry.

9 THE WITNESS: So it has -- it has -- the specifics
10 aren't particularly important, but its assets are -- just this
11 one I just pulled up; they're all a little different, and --
12 but mostly the same -- MGM stock. This is MGM Studios, which
13 you read about with James Bond, a very valuable asset. Across
14 the Highland platform, there's roughly \$500 million worth of
15 stock. It doesn't pay off any income. So if it had debt --
16 and I'm not sure if Gleneagles still has any; I'd have to
17 switch screens; I don't believe it does; if it does, it's
18 small -- it wouldn't get any income-generating -- that's not
19 income generating asset.

20 Vistra, which is the TXU stock I talked about before, is
21 the next biggest asset. Skyline Corporation, which was the
22 one we were selling. That's no longer in there. TCI
23 portfolio, which is a Dondero real estate asset it has, it's
24 an old Las Vegas and Phoenix, Arizona real estate
25 developments. Not income-generating. Not that they don't

1 have value, but this is much more like what would be referred
2 to as a closed-end fund. It's not going to go out and buy
3 anything. It can't. It can only generate cash by selling
4 assets, give that cash to the trustee, and then the trustee
5 pays it through the waterfall. And that's the way all of
6 these CLOs work.

7 Now, some of them do have debt. And some of them have a
8 lot of debt, and the preferred shares will never be worth any
9 money, so we refer to those as being underwater. No surprise,
10 the Dondero-related entities don't own any of those junior
11 securities.

12 The -- some do have debt. A lot of that debt is going to
13 get paid off in the first half of the year because there'll be
14 refinancings at Trussway and a refinancing at Cornerstone.
15 They own debt, and that'll generate cash. It'll go to the
16 CLOs, go to the trustee. First it goes to pay the obligations
17 for the outstanding debt of the CLO, and then the asset
18 dollars, they get put through the waterfall to pay the more
19 junior securities.

20 THE COURT: Okay. And --

21 THE WITNESS: And I --

22 THE COURT: The --

23 THE WITNESS: I was going to give you -- I contrast
24 that to a more typical CLO, which is whether it's beyond its
25 investment period or not, will have something like 150 to 250,

1 sometimes more, loans in it. 150 would be on the loan side.
2 It'll own -- own those in smaller amounts. It has
3 requirements as to what its concentrations are in different
4 buckets of types of assets. It has to return -- it has to
5 have an income-generating ability to satisfy certain covenants
6 in its debt obligations and in the indenture. And then it
7 will, once it gets past its investment period, it will start
8 to harvest those assets.

9 There are different ways for the CLO manager to swap
10 assets, to stay in compliance, to extend out the tenure, but
11 usually markets start to move and there's some reason for the
12 CLO manager to do something like a reset or a refinancing or
13 to call the CLO.

14 So you'll see a number -- there was one this week, and
15 there'll be a number because of the conditions in the market
16 -- of CLOs called by the, effectively, the equity, saying,
17 Great time to sell, I don't need the short income, call the
18 CLO, do a BWIC or some other way to get dollars for all of the
19 assets, pay off all of my debt, and give me the balance of the
20 proceeds.

21 THE COURT: Okay. All right. And the plan
22 contemplates that these will all be wound down over a two-year
23 period, correct?

24 THE WITNESS: It's not a hard -- it's not a hard
25 period.

1 THE COURT: Okay.

2 THE WITNESS: So it's not a two-year period. We're
3 going to -- we're going to manage these assets, as any asset
4 manager would, and we've had direct discussions with some of
5 the underlying holders, including one of the biggest investors
6 in the world who's an investor in the CLO but also has a
7 couple separate accounts which they want us to manage, and
8 we'll look for opportunities, depending on the market. We're
9 not going to -- we're not going to just sell. It's not a
10 liquidation. We're going to find opportunities where, if we
11 believe it's the right value, we'll sell. That doesn't mean
12 we'll sell it all in a big chunk. We may manage pieces. We
13 may hold on to some.

14 Some of them may perform -- some of the assets may
15 actually do things differently than others. For example,
16 Cornerstone, for unknown reasons, has \$60 million of MGM
17 stock, not an asset that you'd think you'd stuff into a
18 healthcare business, but this is Highland. That may be sold
19 before, for example, Gleneagles sells its MGM. It'll just
20 depend on, you know, market and the need of the specific
21 investor.

22 THE COURT: All right. Thank you. That's all the
23 questions I have.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: All right. So, Mr. Seery, I think we're

1 done with you, but we hope you'll stick around for however
2 longer this goes.

3 THE WITNESS: I will indeed.

4 THE COURT: Okay.

5 THE WITNESS: Thank you.

6 THE COURT: Does the Debtor rest, Mr. Morris?

7 MR. MORRIS: Yes, Your Honor. There were those
8 couple of documents that we had used from the different docket
9 that we'll certainly put on the docket with the supplement
10 witness and exhibit list. I just wanted to point that out.
11 And I, you know, I don't recall, frankly, if I moved into
12 evidence each of those extras, and I'm happy to go through it,
13 but it's very important to me that those documents be part of
14 the record. So --

15 THE COURT: Okay. I think what you added was TTTTTT,
16 and I think I admitted it. You moved to admit it, and I said
17 yes, but you're going to have to file it on the docket --

18 MR. MORRIS: Yeah.

19 THE COURT: -- as a supplemental exhibit.

20 MR. MORRIS: Right. And then there were the couple
21 from the other -- let me see if I can get them.

22 THE COURT: I admitted everything else that you filed
23 on the docket except UUUU, VVVV, and AAAAA.

24 MR. HOGWOOD: Yeah. And that's fine.

25 Can we, Ms. Canty, going from Docket No. 46, can we just

1 call up Exhibit K to make sure that that's in evidence?
2 Docket 46 from the Dondero adversary proceeding.

3 Okay. So this was the letter, Your Honor, that I used
4 earlier today with Mr. Dondero. If you scroll down, where I
5 examined him on the trading. This is what led into the
6 December 22nd trading, if you go to the next page. So if it's
7 not in evidence, I would respectfully request that this
8 document be admitted into evidence, Your Honor.

9 MR. RUKAVINA: Your Honor, I object. This document
10 is hearsay of Mr. Pomerantz.

11 THE COURT: Okay.

12 MR. MORRIS: Mr. Dondero has already -- I'm sorry,
13 Your Honor.

14 THE COURT: Okay. So this is -- I wholesale-admitted
15 all of your exhibits with those three carved out that I
16 mentioned. So you're saying I've not admitted this one yet?

17 MR. MORRIS: I just don't recall, because this wasn't
18 on the exhibit list. I will point out that we had no objection
19 to the entry into the evidence of all of K&L Gates letters,
20 and I'm really a little surprised, having heard the testimony
21 from Mr. Dondero on this particular letter, that there would
22 be an objection. But I would respectfully request that it be
23 admitted as an exception to the hearsay rule.

24 THE COURT: All right. Well, I'm going to overrule
25 the objection. I'll admit it.

1 So, again, it has to be supplemented on the docket.

2 (Debtor's Exhibit K is received into evidence)

3 MR. MORRIS: Yes. And there's just one other
4 document, Your Honor, from that same docket. It's Exhibit D,
5 Ms. Canty. I just want to make sure that's in the record as
6 well. And I do apologize again, Your Honor.

7 THE COURT: Okay.

8 MR. MORRIS: I didn't realize until I was reading --

9 THE COURT: We're getting terrible distortion. I
10 don't know where it's coming from, but --

11 MR. MORRIS: Okay. And this is, this is the email
12 that I -- it's Mr. Dondero's own statement, so it's not even
13 hearsay, but I just want to make sure this is part of the
14 evidentiary record, Your Honor. So I move for the admission
15 of this document as well to our exhibit list.

16 MR. RUKAVINA: I believe this document has been
17 admitted. I believe -- I believe --

18 (Echoing.)

19 MR. RUKAVINA: Is that us? Testing.

20 THE COURT: All right. Mike, where is that coming
21 from?

22 (Clerk advises.)

23 THE COURT: Okay. Mike thinks it's Mr. Morris, but
24 -- so put yourself on mute.

25 Mr. Rukavina, go ahead.

1 MR. RUKAVINA: Your Honor, I think this exhibit is in
2 already. If it's not, no objection.

3 THE COURT: All right. So it will be admitted, and
4 again, you need to file it as a supplement, Mr. Morris.

5 (Debtor's Exhibit D is received into evidence)

6 MR. MORRIS: Yeah. Thank you, Your Honor. The
7 Debtor rests.

8 THE COURT: All right. Mr. Rukavina, I want to go a
9 while longer, so let's at least -- do you have Mr. Dondero as
10 well as Mr. Post?

11 MR. RUKAVINA: I do, Your Honor. I have both.

12 THE COURT: Okay. Well, let's go. You may call your
13 witness.

14 MR. RUKAVINA: Your Honor, we'll call Jason Post.

15 THE COURT: All right. Mr. Post, I swore you in
16 earlier and I consider you still under oath. Do you
17 understand that?

18 MR. POST: I do.

19 THE COURT: All right. Go ahead.

20 JASON POST, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

21 MR. RUKAVINA: Oh, turn on the video. Can you see
22 how to do that? Is Jason on the video? Okay. All right.
23 Mr. Post? Hold on a second. I'm hearing myself.

24 THE WITNESS: I'm hearing the same.

25 MR. RUKAVINA: Let me turn down my volume. Testing.

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1 Okay. Mr. Post, can you hear me?

2 THE WITNESS: Yes.

3 MR. RUKAVINA: Okay.

4 DIRECT EXAMINATION

5 BY MR. RUKAVINA:

6 Q You were asked about some of your background and
7 qualifications. Just so that the record is clear, you are the
8 chief compliance officer for both two Advisors and each of the
9 Funds, correct?

10 A Correct.

11 Q And I think we refer to these three defendant funds as
12 retail funds; is that correct?

13 A Correct.

14 Q Describe what we mean or what you mean by a retail fund.

15 A I look at it two ways. There's private funds, which are
16 institutional in nature, and retail funds, which are comprised
17 of open-end funds, closed-end funds, BDCs, ETFs, and that
18 constitutes the suite of funds that are advised by Highland
19 Capital Management Fund Advisors and NexPoint Advisors. And
20 they generally have a broad swath of investors, including
21 institutional investors, but also, you know, just regular mom-
22 and-pop investors.

23 Q Okay. So, for the Highland -- I'm sorry, for the three
24 retail funds, how much in ballpark investments do they have in
25 the CLOs that are at issue today? Ballpark.

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1 A Maybe call it a hundred million, ballpark. Or a hundred
2 million, give or take.

3 Q Okay. And for all of the CLOs that Highland manages that
4 the Advisors and other Funds have an interest in, do you have
5 an estimate of how much it manages of CLO assets?

6 A I believe it's approximately a billion, a little over a
7 billion that HCMLP manages for its CLO assets.

8 Q Do you have an estimate of how many individual investors
9 there are in the three retail funds?

10 A I -- thousands. I don't have an exact number.

11 Q Okay. And I think you mentioned some of the types. Do
12 you have any names of the types of investors that Her Honor
13 might know or have heard of before?

14 A Off the top of my head, I do not, just -- but they're
15 generally constituted or characterized of the investor types
16 that I mentioned earlier.

17 Q Okay. Now, these three retail funds, do they own voting
18 preference shares in any of the CLOs that the Debtor manages?

19 A Yes.

20 Q Okay. Do they own a majority in any of those CLOs' voting
21 preference shares?

22 A In aggregate, across the three, they would.

23 Q Okay.

24 A With other CLOs.

25 Q What are those three CLOs, sir?

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1 A I believe it's Greenbrier, Graceland, and Stratford, if I
2 recall correctly.

3 MR. RUKAVINA: Your Honor, have you received a
4 couriered binder of our exhibits?

5 THE COURT: I have. I've got them right here.

6 MR. RUKAVINA: Now I can't hear the judge. What's
7 she saying?

8 THE COURT: Yes. I've got them.

9 MR. RUKAVINA: I think you're on mute, Judge.

10 MR. VASEK: No, you turned your volume down.

11 MR. RUKAVINA: Oh. I apologize, Your Honor.

12 So, Mr. Vasek, if you'll please put Exhibit 2 up.

13 BY MR. RUKAVINA:

14 Q Mr. Post, are you the custodian of records for the Funds
15 and Advisors?

16 A Yes. We're required to keep records of ownership and
17 trades for the Funds involved.

18 Q And you are an actual officer of these Funds and Advisors,
19 correct?

20 A Correct.

21 Q Okay. Are you familiar with this Exhibit 2?

22 A I am.

23 Q Did you participate in pulling together the underlying
24 information with others to prepare Exhibit 2?

25 A I did.

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1 Q Does Exhibit 2 accurately reflect the current ownership of
2 the various CLOs by the three retail funds that are --

3 A At the time it was put together, I believe it did.

4 Q And approximately when was that?

5 A I believe it was in the November time frame, middle of
6 November, end of November.

7 Q Do you have reason to believe that the numbers we're
8 referring to would be materially different today?

9 A I don't believe they would be materially different.

10 MR. RUKAVINA: Your Honor, I move for the admission
11 of Exhibit 2 as a summary of underlying data.

12 THE COURT: All right. Any objection?

13 MR. MORRIS: Yes, Your Honor. It's hearsay. I
14 understand that the witness has testified to it, but just as I
15 put in the backup for my demonstrative, where's the backup?
16 We're just supposed to take his word for it? There's no
17 ability to check this. This is not evidence. It's a
18 demonstrative.

19 THE COURT: All right. Mr. Rukavina, do you have
20 backup?

21 MR. RUKAVINA: Let me ask the witness a couple more
22 questions.

23 BY MR. RUKAVINA:

24 Q What would be the backup for this Exhibit 2?

25 A We'd have to pull the holdings from the intranet and that

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1 would identify the quantity that's held by each of the
2 respective funds and then an aggregate that, over the
3 preference shares outstanding, would give you the percentages
4 that are outlined in this exhibit.

5 Q Okay. And is that a database that you have personal
6 access and authority over?

7 A I have personal access to it. Yes.

8 Q Okay.

9 MR. MORRIS: Your Honor, *voir dire*?

10 BY MR. RUKAVINA:

11 Q Can you easily take that data from a computer and show it
12 to the Court here today?

13 A Yes. It would just require the CUSIPs for each of the
14 preference shares and then plug it into the intranet and then
15 that would provide a screenshot of the ownership of the CLOs.

16 Q And is this what that is, basically?

17 A This is an aggregation -- or, this is a percentage of the
18 shares outstanding, the preference shares. So what would be
19 shown on the intranet would be the quantity and then you'd
20 have to tie that back to the shares outstanding and that would
21 give you the percentages that are shown on this exhibit.

22 MR. MORRIS: *Voir dire*, Your Honor?

23 THE COURT: I'm sorry?

24 MR. MORRIS: May I inquire before this --

25 THE COURT: Mr. Morris, is that you? Okay. You want

Post - Voir Dire

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1 to take him on *voir dire*?

2 MR. MORRIS: Yes.

3 THE COURT: Go ahead. Uh-huh.

4 VOIR DIRE EXAMINATION

5 BY MR. MORRIS:

6 Q Yes. Mr. Post, did you prepare this document?

7 A I provided information and the document was ultimately
8 prepared by counsel.

9 Q So you didn't personally prepare this, right?

10 A I didn't personally put this chart together.

11 Q And you didn't personally make the calculations on this
12 chart, right?

13 A I would have supplied or assisted in supplying the
14 holdings with reference to the shares outstanding and then
15 they would have done the math to place the percentages.

16 Q I'm asking a very specific question. You didn't do the
17 calculations necessary to come up with the percentages on this
18 chart, right?

19 A Me personally, no, I did not.

20 Q And you can't verify that this chart is accurate, can you?

21 A I provided, provided the information. Then it's a
22 mathematical calculation.

23 Q Okay. You didn't take any steps to determine the accuracy
24 of this chart, right? You relied on others?

25 A There's a -- I would have cross -- you know, maybe cross-

1 referenced some of the percentages against another spreadsheet
2 that was -- that we had internally.

3 Q Sir, I didn't want to know what you would have done. You
4 didn't do anything to confirm the accuracy of all of the
5 numbers on this page, correct?

6 A I believe I may have spot-checked a couple of them. I
7 can't recall specifically.

8 MR. MORRIS: Your Honor, not only don't we have the
9 backup, but this witness isn't even competent to testify to
10 the accuracy of the chart. I renew my objection.

11 THE COURT: All right. I sustain the objection.

12 MR. RUKAVINA: Your Honor, I'll --

13 THE COURT: It's not allowed.

14 MR. RUKAVINA: Going back to the -- take that down.

15 THE COURT: All right. Mr. Rukavina, we're -- our
16 connection to your office is suddenly not very good. Both you
17 and Mr. Post are very hard to hear. So let's see what we can
18 to improve.

19 MR. RUKAVINA: Is it a question of loudness or
20 quality?

21 THE COURT: Quality. And I heard you fine just then,
22 but -- so let's try again.

23 DIRECT EXAMINATION, RESUMED

24 BY MR. RUKAVINA:

25 Q Mr. Post, let's go back to those retail funds. How are

1 those funds managed at the top level?

2 A They're overseen by a board of trustees.

3 Q Okay. Do you interact with that board of trustees
4 periodically?

5 A I do.

6 Q Okay. Approximately how often?

7 A At least quarterly, and generally intervening periods.
8 I'd probably say anywhere from every five to six weeks, if not
9 more frequent.

10 Q Have you been communicating with them more frequently
11 recently?

12 A Yes.

13 Q As the CCO of the funds, who do you ultimately report to?

14 A The board.

15 Q Is Mr. Dondero on any of those boards?

16 A He is not.

17 Q Okay. Are those boards capable, to your experience, of
18 making independent decisions?

19 MR. MORRIS: Objection to the form of the question.

20 THE COURT: Overruled.

21 THE WITNESS: I think the question, is are they
22 capable of making independent determinations? Yes.

23 BY MR. RUKAVINA:

24 Q Okay. Explain the interaction between the Fund Advisors
25 and the retail funds. What -- what does the one do for the

1 other, if you will?

2 A I'm sorry. Can you repeat that? I didn't -- I didn't
3 hear the question.

4 Q So, we have the three retail funds.

5 A Yes.

6 Q What relationship, if any, is there between the two
7 Advisor defendants and any retail fund defendants?

8 A So, there's an investment advisory agreement that the
9 Funds have entered into with the investment advisor, and the
10 investment advisor performs investment functions on behalf of
11 those Funds, along with other noninvestment functions.

12 Q Okay. So is it fair to conclude that, for investment
13 purposes, the Advisors make pretty much all, if not all,
14 decisions for the three Funds?

15 A Yes.

16 Q Okay. What about other matters that the board might
17 consider? Do the Funds make -- I'm sorry. Do the Advisors
18 make other decisions for the Funds, or is it an advisory role?

19 A The Advisors may make other decisions or recommendations,
20 which they then set forth to the board for their approval, if
21 needed.

22 Q Okay. Does the board have independent counsel?

23 A They do.

24 Q Okay. Have you interacted before?

25 A I have.

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1 Q And is it fair to conclude that the board not only is
2 capable of making independent decisions but has made
3 independent decisions recently?

4 MR. MORRIS: Objection. Leading.

5 THE COURT: Sustained.

6 THE WITNESS: They have.

7 MR. RUKAVINA: Okay.

8 THE COURT: That was --

9 MR. RUKAVINA: And we'll get --

10 THE COURT: You don't answer.

11 MR. RUKAVINA: Go into that in another bit.

12 THE WITNESS: Oh. Sorry.

13 MR. RUKAVINA: Okay.

14 BY MR. RUKAVINA:

15 Q Explain to the Court what your role as the chief
16 compliance officer for the Advisors and the Funds is.

17 A I think, as you mentioned earlier, it's interaction with
18 the board. Also with regulatory bodies to the extent
19 examinations occur. It could be to ensure oversight and
20 compliance with a fund's prospectus and SAI limitations, and
21 then it's establishing policies and procedures and ensuring
22 that those policies and procedures are adequate to detect any
23 sort of violations that could occur by the Funds.

24 Q And are you an attorney?

25 A I am not.

1 Q Do you frequently work with attorneys?

2 A I do.

3 Q Both in-house and external?

4 A Yes.

5 Q Good. And do you frequently rely on the advice of
6 counsel?

7 A I do. At times will present, you know, if there is a
8 question or an issue, present the background to either
9 internal or external counsel and then request their advice on
10 certain matters.

11 Q So when counsel was asking about why you wouldn't appear
12 at a hearing or listen to a hearing or read a transcript of a
13 hearing, are those the kinds of things that you would rely on
14 counsel?

15 A Yes. If counsel were to tell me to, you know, attend the
16 hearing, I would have attended the hearing.

17 Q Okay. Does -- do the Funds and Advisors also have in-
18 house counsel?

19 A Yes.

20 Q I think we established that's D.C. Sauter?

21 A He's been the primary point of in-house counsel more
22 recently, I'd say, within the past three to four months.

23 Q Okay. And would you expect that perhaps he would be
24 attending hearings and reading transcripts instead of you for
25 some of these litigated matters?

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1 MR. MORRIS: Objection to the form of the question.

2 THE COURT: Overruled.

3 MR. MORRIS: Leading.

4 THE COURT: Overruled.

5 THE WITNESS: I believe he would be.

6 BY MR. RUKAVINA:

7 Q Okay. Well, the implication was made, Mr. Post, that
8 somehow you were negligent as CCO by not following the
9 December 16th hearing. I'd like to know, --

10 THE COURT: Okay. Could you -- could you repeat --

11 BY MR. RUKAVINA:

12 Q -- Did you have counsel at the hearing and did you hear
13 from --

14 THE COURT: Mr. Rukavina, start over with your
15 question. It was a little hard to hear.

16 MR. RUKAVINA: Okay.

17 BY MR. RUKAVINA:

18 Q Mr. Post, the implication had been made that, because you
19 weren't at the December 16th hearing and because you had not
20 read the transcript, that you were somehow deficient as a CCO.
21 I'd like to know, Did you have the benefit of outside
22 counsel's views both before and after that hearing as to that
23 hearing and what happened?

24 A Yes.

25 Q It's not that you put your head in the sand and ignored

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1 what's happening, is it?

2 A That is correct.

3 Q Okay. And is it fair to say that when you deal with
4 compliance, you deal with complicated statutes and
5 regulations?

6 A That is correct.

7 Q Okay.

8 MR. RUKAVINA: Mr. Vasek, if you'll please pull up
9 (garbled).

10 (Pause.)

11 BY MR. RUKAVINA:

12 Q Okay. Taking you back to Mr. Morris's questions, do you
13 recall Mr. Morris asking you whether you believe that any of
14 the trades that were being discussed were deceptive?

15 MR. MORRIS: Hold on one second, Your Honor. What
16 exhibit is this?

17 THE COURT: I don't know. What is it?

18 MR. RUKAVINA: Can you hear me, Mr. Post?

19 THE WITNESS: They're asking a question as to what
20 exhibit this is.

21 MR. RUKAVINA: Your Honor, this is not an exhibit.
22 This is a Commission Interpreting Regarding Standard of
23 Conduct for Investment Advisors, an SEC regulation in
24 conjunction with 17 CFR 276.

25 THE COURT: Okay. How are we --

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1 MR. RUKAVINA: So, Your Honor, these are the actual
2 regulations.

3 THE COURT: I mean, it's -- okay. The answer to the
4 question is it's not an exhibit. You have pulled up 17 CFR
5 part 276. Is that what the answer is?

6 MR. RUKAVINA: Yes, Your Honor. And I haven't
7 offered this as an exhibit.

8 THE COURT: All right.

9 MR. MORRIS: You have -- Your Honor, I don't know why
10 this is being put up on the screen now. It's not an exhibit.
11 It's not in the record like a couple of those that I had. I
12 used the statute that he relied on to cross-examine him with
13 the 206. I don't know what this is. I don't know if it's
14 accurate. I don't know anything about it.

15 MR. RUKAVINA: Your Honor, this is a rule and
16 regulation. This is not an exhibit. If it is an exhibit, I
17 haven't moved to admit it yet. I'm going to use this to
18 refresh his memory and explain why he believed that the
19 actions were deceptive, a door opened solely by Mr. Morris.

20 MR. MORRIS: His recollection hasn't -- there's no
21 need to refresh it yet. He hasn't even answered a question
22 where he says, "I don't remember."

23 THE COURT: Okay. I sustain the objection here. I
24 mean, you can ask him a question, but, again, it's kind of
25 hard for us to tell what this is, actually. I mean,

1 Commission Interpretation Regarding Standard of Conduct for
2 Investment Advisors. I mean, is this actually a -- I mean,
3 it's not a statute. I'm not even sure it's a reg. It's --

4 MR. MORRIS: Okay.

5 THE COURT: I don't know what it is. So, --

6 MR. RUKAVINA: Your Honor, we'll lay a predicate
7 later. First, let me ask some other questions.

8 BY MR. RUKAVINA:

9 Q Again, you recall that you were asked whether, pursuant to
10 Section 206 of the Advisers Act, you believed the trades that
11 have been discussed were deceptive. Do you recall?

12 A Yes.

13 Q Okay. And you answered that you believed that they were
14 deceptive?

15 A Correct. I did.

16 Q As the CCO, do you have an understanding of what role, if
17 any, conflicts of interest play in an advisor's duties under
18 the Advisers Act?

19 A Yes.

20 Q Okay. What is your understanding?

21 A All -- all known material conflicts of interests need to
22 be disclosed -- need to be disclosed by the advisor to the
23 underlying investors.

24 Q Okay. And why, why do those conflicts of interests have
25 to be disclosed?

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1 A Because an advisor could have a view that may deviate from
2 the underlying investors' view of how the portfolio could be
3 managed and in contradiction to it.

4 Q And do you have an understanding as to whether, pursuant
5 to your experience as the CEO [sic], the Advisers Act and the
6 SEC regulations (garbled) it require an advisor to adopt the
7 principal's goals as opposed to his or her own goals?

8 MR. MORRIS: Objection to the form of the question.
9 Your Honor, he has not been offered as an expert. He
10 shouldn't be permitted to provide -- this is -- this would be,
11 at best, expert testimony. I asked him 30 different questions
12 about his background. He's got no training. He's got no
13 licenses. He's taken no special courses. He doesn't have
14 anything except on-the-job training. This is not right.

15 MR. RUKAVINA: Your Honor, Mr. Morris got to ask yes-
16 and-no questions all day, leading questions, and the witness
17 was told that he could explain his answers. The Court told
18 him that. And I am trying to explain his answer as to why he
19 believed that these transactions were deceptive, especially
20 because the allegation is that we willfully and intentionally
21 violated the stay by sending letters that this witness
22 authorized. So understanding his understanding is very
23 important to Your Honor's determination of the actual --

24 THE COURT: Well, I sustain the objection.

25 MR. RUKAVINA: And Mr. Morris opened this door.

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1 THE COURT: You can ask him why he thought the
2 actions were deceptive, but he's starting to go into what may
3 or may not be CFRs and conflicts of interest. No. This is
4 going well beyond asking him, Why do you think it was
5 deceptive? And I agree: It's straying into expert testimony.

6 BY MR. RUKAVINA:

7 Q Mr. Post, you are familiar with the December 22nd AVYA
8 and SKY sales and transactions which you were asked about by
9 Mr. Morris and that you previously have testified about,
10 correct?

11 A Correct.

12 Q Okay. How are you familiar with those sales and
13 transactions as they were occurring? How did you learn about
14 them?

15 A There was some internal email correspondence. If I recall
16 from memory, at the bottom it provided fill information that
17 Jefferies provided to, I believe, Mr. Seery and others on the
18 email. And then it kind of worked its way up to get the
19 trades that had been executed administratively booked into the
20 OMS.

21 Q Why did you get involved with those transactions?

22 A They were requesting that employees of HCMFA book those --
23 I'm sorry, Highland Capital Management Fund Advisors -- book
24 those into the system. And those employees were not a party
25 to the trade. I don't believe --

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1 Q Well, let me pause you. Let me pause you. Those two
2 employees, who were they?

3 A Joe Sowin and Matt Pearson.

4 Q Were they at that time employees of the Debtor?

5 A They were not.

6 Q Okay. So, how did you come to learn about this ask that
7 those two employees book -- book it?

8 A I believe there was an email that was sent to me, or I was
9 on it. I can't recall specifically.

10 Q Okay. And did you undertake any review as to whether
11 those two employees should or should not do what was being
12 asked of them?

13 A Once it was brought to my attention, I discussed with -- I
14 looked at it. It looked like, pursuant to prior
15 correspondence with -- that Joe Sowin made, he wasn't aware of
16 the trades.

17 You know, I also had a discussion with K&L based off of --
18 our legal counsel based off of a prior letter that was sent,
19 and just it didn't -- it didn't look right that they would be
20 booking trades on behalf of the two Advisors that are named in
21 the letters when they had nothing to do with it and weren't --
22 weren't a part of any of the pre-trade compliance checks, et
23 cetera.

24 Q What is a pre-trade compliance check?

25 A Well, there's an electronic system, a -- or a management

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1 system we have, the OMS, which is called Verda (phonetic).
2 And generally, trades are entered into the system by the
3 portfolio manager, and they then go through pre-trade
4 compliance checks. And once those compliance checks are
5 passed, they're then routed to the trading desk for direction
6 or execution, where the executing brokers and the trading desk
7 will then monitor that execution over the course of the day.
8 And at the conclusion of the trading day, those trades, if
9 they weren't already allocated, would be allocated, and then a
10 trade would be sent to custodian prime brokers to identify the
11 trades that occurred in the respective Funds for those -- or,
12 on that day, and then they would then be dropped into the
13 database and our -- the settlement team would kind of work to
14 settle those trades or ensure that those trades were settled
15 based off of the stipulated time frame for settlement on the
16 trades.

17 Q So, in all that course of a transaction, what exactly was
18 it that those two employees of the Advisors were being asked
19 to do on behalf of the Debtor? What exactly were they being
20 asked to do?

21 A To just book them in the system because they are trades
22 that already have been executed.

23 Q Did you stop that?

24 A I believe I responded and said, you know, it -- they're
25 employees of, if I recall, employees of one of the named

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1 Advisors, and believe those trades are in the best interest of
2 those Advisors, and separately, you know, the Debtor has
3 designated operators/traders that should be able to enter
4 those trades as well, aside from Mr. Sowin and Matt Pearson.

5 Q So can you think of any reason why Mr. Seery would ask
6 your employees, as with his own employees, to book these
7 trades?

8 A I believe based off of past practice.

9 Q Okay. But nevertheless, those two trades did not comply
10 with internal compliance?

11 A They weren't run through the OMS. We try and route trades
12 through the order management system because there's pre-trade
13 compliance checks that can be performed, and it reduces any
14 sort of back-end reallocation or trade errors that may occur
15 as a result of, you know, trades being entered after the fact,
16 because quantities could be, you know, referenced incorrectly
17 or funds could be identified incorrectly.

18 Q Based on prior practices, have these internal policies
19 been followed when perhaps employees of the Debtor asked
20 employees of the Advisors to take a particular action in the
21 course of a transaction?

22 A Yes.

23 Q When internal practices are not followed, what is your
24 job? What are you supposed to do?

25 A When internal practices are followed, --

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1 Q Are not followed.

2 A Oh. Not followed? To the extent that they're not
3 followed, we would question, you know, number one, why weren't
4 they followed? You know, we -- we try and have all trades
5 booked in the OMS so that the necessary checks could be
6 performed, and as I mentioned earlier, to avoid any
7 reallocation or trade errors. So I would then question, you
8 know, why was this done outside of the system?

9 Q And if you did not get an appropriate response back to
10 your question, what are you supposed to do?

11 A If I didn't get an appropriate response, would, you know,
12 research it further and elevate it to senior management and/or
13 any of the board if it was ultimately an issue.

14 Q Are you supposed to stop trades or stop the process if you
15 see something that you believe is not compliant with your
16 obligations and the fiduciary obligations of the Advisors?

17 A Yes.

18 Q Have you done that in the past?

19 A Yes.

20 Q Have you done that frequently, or infrequently?

21 A I would say it's -- it's infrequent, but they do occur.
22 For example, if a fund is trading in a security that it's not
23 permitted to invest in based off of a prospectus limitation,
24 it would get flagged in the OMS and we would then not permit
25 the trade to go forward because it could cause the breach to

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1 go further offsides or it could cause it to go offsides.

2 Q Okay. And these December 22nd trades, were they the type
3 of, in your past experience, problematic trades like you have
4 interfered or stopped or intervened to stop in other
5 situations in the past? Do you understand my question? That
6 was an inartful question. Do you understand it?

7 A If the question is because they were done outside of the
8 system?

9 Q Yes.

10 A And repeatedly?

11 Q Yes.

12 A I would have raised the question with the trading desk or
13 the portfolio manager as to why that's being done, because it
14 was not in -- not consistent with how we instruct trades be
15 booked.

16 Q Did Mr. Dondero, for these December 22nd transactions,
17 tell these two employees not to book the trades?

18 THE COURT: Okay. Please repeat the question. It
19 was garbled.

20 MR. RUKAVINA: Thank you, Your Honor.

21 BY MR. RUKAVINA:

22 Q For these December 22nd trades, did Mr. Dondero tell those
23 two employees not to book the trades?

24 MR. MORRIS: I object, Your Honor. No foundation.

25 This witness has no personal knowledge to testify to this --

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1 to answer this question.

2 THE COURT: Overruled. If he knows.

3 THE WITNESS: I do not know.

4 BY MR. RUKAVINA:

5 Q Okay. Do you have a reason to believe that he did?

6 A I don't know. I just saw the email traffic and Mr. Sowin,
7 I believe, was questioning the trades, you know, more in the
8 sense that he wasn't aware of them. So, I don't -- I don't
9 know what kind of conversations, what happened in the
10 background, just that he -- he didn't recognized that rates.

11 Q Let me try it this way. You determined that these trade
12 would have violated the Advisors' policies and procedures,
13 correct?

14 A Yes, because they were done outside of the OMS.

15 Q Did Mr. Dondero tell you to come to that conclusion?

16 A He did not.

17 Q Did Mr. Dondero pressure you to come to that conclusion?

18 A He did not. He had indicated that there -- there are
19 these trades, and you should take a look at it from a legal
20 compliance perspective, which I did.

21 Q And you talked to K&L Gates?

22 A Correct.

23 Q And when Mr. Dondero told you to look at these trades, did
24 he suggest to you in any way, shape, or form what you should
25 conclude or decide to do, if anything, with respect to these

1 trades?

2 A I don't believe so.

3 Q Okay. Let's go back to that question about your view that
4 some of what Mr. Seery was doing was deceptive under the 1940
5 Investors Act. When did you form that view?

6 A I believe it was after it was identified that there was
7 not (inaudible) on certain of the trades that were entered
8 into at the end of the November time frame, the SKY and AVYA
9 trades.

10 Q And why did you form the opinion that those trades that
11 Mr. Seery was attempting to do or had done were deceptive
12 under the statute that Mr. Morris asked you about?

13 A It was pursuant to reviewing them and supplemental
14 discussion. A review with the portfolio managers and then
15 supplemental discussion with K&L be it from a (inaudible)
16 perspective, through, you know, perform in the best interest
17 of your clients, it was expressed that, at least with respect
18 to preference shareholders, they were supposed to maximize
19 value, and those sales, they're not really maximizing value.

20 And it was also identified that the Debtor was planning to
21 liquidate the CLOs based off of a filing within the Court
22 within a few-year period. And the investors -- or, the Funds
23 that invested and the preference shareholders, or preference
24 shares, had a longer-time view in those assets.

25 So the sales, coupled with the short duration, or the

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1 anticipated, you know, two-year duration, didn't line up with
2 the investment objective that they were seeking to maximize
3 returns.

4 Q To your understanding and your experience, does the
5 servicer of the CLOs owe fiduciary duties to anyone?

6 THE COURT: Okay. I cannot -- someone is flipping
7 paper. Please stop flipping paper. Okay. Repeat your
8 question, Mr. Rukavina.

9 MR. RUKAVINA: Thank you, Your Honor.

10 BY MR. RUKAVINA:

11 Q In your experience and in your knowledge, does the
12 servicer of the CLOs owe fiduciary duties to anyone?

13 A They should, yeah, the underlying investors in the CLO,
14 whether it be the Debtor or the equity holders.

15 Q Do the Advisors owe fiduciary duties to anyone?

16 MR. MORRIS: Your Honor, I'm sorry, I apologize. I
17 really do move to strike. He's not a lawyer. There is no
18 foundation. He's not here as an expert. There's no basis for
19 this witness to be talking about who owes who fiduciary
20 duties. I don't even think that's the law, what's just been
21 stated.

22 THE COURT: Okay. I sustain.

23 MR. RUKAVINA: Okay.

24 BY MR. RUKAVINA:

25 Q Well, let me make it very easy, then. Do you have an

1 understanding as to whether Advisors subject to the 1940 Act
2 owe a fiduciary duty?

3 A Yes.

4 Q Do you have an understanding of how a conflict of interest
5 plays into a fiduciary duty?

6 A Yes.

7 Q What is your understanding?

8 A If there's a material conflict of interest, it should be
9 disclosed.

10 Q And what did you conclude with respect to Mr. Seery and
11 the Debtor once the Debtor stated that it will liquidate
12 within two years?

13 A That's not the investment horizon that the underlying
14 preference shareholders have, especially with respect to the
15 underlying assets held in those CLOs. More or less, you're --
16 they're now put on a clock, and those preference shareholders
17 may have a longer-term view on the underlying assets of those
18 CLOs.

19 Q Let's move on to those December 22nd and December twenty
20 -- well, let me strike that. You heard Mr. Seery testify that
21 those December 22nd trades closed, correct?

22 A I did.

23 Q And did you independently look at whether that's true?

24 A I did.

25 Q And what did you conclude?

1 A They showed a sale in the -- on the intranet.

2 Q Okay. Let's move on to the December 22nd and December
3 23rd letters. Are you familiar with those letters from K&L
4 Gates to counsel for the Debtor?

5 A I am.

6 Q And did you participate in preparing those letters?

7 A I did.

8 Q Okay. And I think Mr. Morris asked you and I think you
9 testified you supported or agreed with the sending of those
10 letters. Is that generally accurate?

11 A Yes.

12 Q Why? Why did you support sending those letters?

13 A It wasn't in the best interest of the Funds pursuant to
14 discussions with the portfolio managers and the investment
15 objectives that they were looking to seek any of those
16 investment in the preference -- preference securities and
17 CLOs.

18 Q Was that a purpose that you were trying to achieve by
19 sending those?

20 THE COURT: Repeat the question.

21 THE WITNESS: Ah, --

22 THE COURT: Repeat the question.

23 BY MR. RUKAVINA:

24 Q Was that a purpose that you were trying to achieve by
25 sending those letters?

1 A Yes. I believe there was something towards the end of one
2 or both letters that said, to the extent, you know,
3 transactions occur, if, for lack of better words, a courtesy
4 heads up could be given to the Funds and the Advisor.

5 Q Did you intend in any way to intimidate the Debtor by
6 authorizing or supporting the sending of those letters?

7 A No.

8 Q Did you intend in any way to violate the automatic stay by
9 sending those letters?

10 A No.

11 Q Were you trying to engage the Debtor in a dialogue at that
12 time as to what to do with these CLO management agreements?

13 A Yes. I believe that was stated at one -- at the end of
14 one or both of the letters.

15 Q And I think Mr. Morris discussed with you that the Debtor
16 sent back letters asking you to withdraw these two letters.
17 Do you recall that discussion?

18 A Yes.

19 Q And do you recall saying that we never withdrew these
20 letters, right?

21 A Correct.

22 Q Why did we not withdraw these letters?

23 A Because we don't believe that the trades that are being
24 entered into are in the best interest of the shareholders --
25 *i.e.*, the Funds.

1 Q To your knowledge, did we ever, or did you ever,
2 communicate to the Trustees or Issuers anything in the nature
3 of instructing them to terminate the CLO management agreements
4 with the Debtor?

5 A I did not.

6 Q To your knowledge, did anyone, for the Funds or Advisors?

7 A I don't believe so.

8 Q Did you or anyone to your knowledge communicate to the
9 Issuers or Trustees that the process of removing the Debtor as
10 manager should commence?

11 A I don't believe so.

12 Q Okay. To your knowledge, have any of the Issuers or
13 Trustees undertaken any steps to remove the Debtor or
14 terminate these contracts?

15 MR. MORRIS: Objection to the extent it calls for the
16 conduct or knowledge of the Issuers.

17 THE COURT: Overruled. He can answer if he knows.

18 THE WITNESS: I don't believe so.

19 BY MR. RUKAVINA:

20 Q Had they, is that something that you would have expected
21 them to inform the Funds of?

22 A Yes. The Funds would have received some type of
23 notification if there was a new Advisor on the CLOs.

24 Q So, other than these two letters -- let me stop there.
25 Did any discussion of trying to terminate these contracts

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1 basically cease with the sending of these two letters and the
2 Debtor's responsive letters?

3 A That's my understanding, yes.

4 Q Okay. And we never did file a motion for lift stay. Can
5 you explain to the judge why we didn't file a motion for
6 relief from the stay?

7 A It's my understanding that the intent was that the
8 management of the CLOs was going to be heard in conjunction
9 with the confirmation hearing.

10 Q And do you recall when that confirmation hearing was
11 originally set for?

12 A I believe it was supposed to start today. Or tomorrow.

13 Q Well, wasn't it earlier in January? Around January 11th?

14 A Uh, I -- I don't recall specifically.

15 MR. RUKAVINA: Mr. Vasek, if we could pull up the
16 Form CLO agreement. What exhibit is that?

17 (Pause. Counsel confer.)

18 MR. RUKAVINA: No, that's not.

19 THE COURT: Can I ask what we're about to start
20 doing?

21 MR. RUKAVINA: Eight.

22 THE COURT: Can I ask what we are about to start
23 doing?

24 MR. RUKAVINA: Your Honor, I apologize. I'm trying
25 to find one of the CLO portfolio management agreements. I'm

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1 trying to pull it up for you.

2 THE COURT: Okay.

3 MR. RUKAVINA: It should be in your binder.

4 THE COURT: All right. Well, --

5 MR. RUKAVINA: Where is it, Julian?

6 MR. VASEK: It should be 8.

7 MR. RUKAVINA: I'm sorry?

8 MR. VASEK: 8.

9 MR. RUKAVINA: Your Honor, it's Exhibit 8 in your
10 binder.

11 THE COURT: Exhibit --

12 BY MR. RUKAVINA:

13 Q And Mr. Post, you have that in front of you, right?

14 MR. RUKAVINA: Mr. Vasek, if you'll go to Page 14,
15 please. Section 14. Termination by the Issuer for Cause.

16 MR. VASEK: Okay.

17 MR. RUKAVINA: Your Honor, the contract speaks for
18 itself, and I'm not about to read the contract to the Court.
19 The Court can read. I want to ask him certain questions about
20 this. And you'll note that the contract gives the requisite
21 holders of voting preference shares certain rights.

22 MR. MORRIS: Your Honor, respectfully, the witness
23 has testified that he hadn't seen any of these contracts for
24 five or six years, until the lawyers asked him to look at it,
25 and they told him which specific provisions to look at.

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1 The document does speak for itself. Counsel should just
2 make it part of his closing argument. There's no evidence
3 that there's a quote/unquote Form CLO Management Agreement.
4 And I would just respectfully suggest that this is better
5 saved for closing argument.

6 THE COURT: Yes. What are we going to do here? He
7 did not seem like he was an expert on these CLOs in his
8 earlier testimony. He hadn't read much of them until
9 recently. So where are we going with this?

10 MR. RUKAVINA: Well, Your Honor, the question, again,
11 is -- can you hear me? The question again is, Are we going to
12 be enjoined from exercising any rights in the future, so I
13 would like to take the witness through the importance from a
14 regulatory perspective and a fiduciary perspective of some of
15 these rights. If Your Honor thinks that that's for closing
16 argument, that's fine. But I will note that that Your Honor
17 allowed Mr. Morris for some forty minutes to read prior
18 testimony into the record.

19 MR. MORRIS: I'm happy to respond if Your Honor needs
20 me to.

21 THE COURT: Go ahead.

22 MR. MORRIS: There is a complete difference, Your
23 Honor. To read statements against interest, to read defense's
24 own sworn statements that they made at a prior proceeding, as
25 opposed to trying to get a witness who has admitted that he's

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1 not familiar with these documents, to try to convince the
2 Court that they said something that the witness doesn't have
3 any personal knowledge or expertise about. It's completely
4 different.

5 THE COURT: All right. I sustain the objection. You
6 can make whatever argument you want in the closing arguments
7 about whatever provisions of whichever CLO agreements justify
8 actions. I guess that's where we're going.

9 MR. RUKAVINA: Then, if you could pull up Exhibit 78,
10 and if Your Honor could turn to Exhibit 78.

11 THE COURT: All right.

12 MR. RUKAVINA: Is this a confidential -- Julian, what
13 does it mean, it's confidential? 78. Is this confidential?

14 MR. VASEK: It says confidential on the --

15 MR. RUKAVINA: Your Honor, apparently this is a
16 confidential document, so how does the Court want to proceed
17 on this WebEx?

18 THE COURT: All right. We're stopping. We're
19 stopping. We have protocols in place in this case, and people
20 usually file motions to present things under seal or
21 redactions. My patience is shot, so we're going to stop.
22 Let's talk about where we go from here.

23 MR. MORRIS: If I may, Your Honor?

24 THE COURT: Yes.

25 MR. MORRIS: John Morris from Pachulski Stang --

1 THE COURT: Uh-huh.

2 MR. MORRIS: -- for the Debtor.

3 MR. RUKAVINA: We filed this under seal, right?

4 MR. MORRIS: We were --

5 MR. RUKAVINA: Oh, I thought we had.

6 MR. MORRIS: -- hoping that we would get this
7 finished today, Your Honor, and the Debtor was really hoping
8 to get a ruling before confirmation. But given all that's in
9 front of us, including the contempt hearing next Friday, just
10 a couple of days after the confirmation hearing, I think the
11 Debtor at this point is prepared to agree, if it's okay with
12 the Defendants' counsel, to push this to the following week,
13 since the -- you know, with the understanding that everybody
14 stipulate on the record that the TRO stays in place. And if
15 we could have this particular motion heard, I guess, somewhere
16 -- it's the week of February 8th, the Debtor would consent to
17 that.

18 THE COURT: All right. Do we already have a --

19 MR. RUKAVINA: Your Honor, can the Court --

20 THE COURT: -- setting that week? Because I know we
21 have confirmation, what, are we set for the 2nd, 3rd, and 4th?
22 Three days next week.

23 MR. MORRIS: I believe -- yeah. I think it's just
24 two, Your Honor. I think --

25 THE COURT: Okay.

1 MR. MORRIS: -- confirmation is the 2nd and the 3rd,
2 and then I think the 5th is the contempt hearing. I'm not
3 aware, but I don't -- I don't profess to know the entirety of
4 the calendar. I'm not aware of anything that's on for the
5 following week.

6 THE COURT: Does it make sense to continue this to
7 the 5th? Because the issues are so overlapping here. I feel
8 like it's been a contempt hearing half of today, actually.

9 MR. MORRIS: Yeah.

10 THE COURT: So, shall we just set it for -- is it
11 Friday, the 5th?

12 MR. MORRIS: It is.

13 THE COURT: At 9:30?

14 MR. MORRIS: And I think that's a great idea, yeah.
15 Yeah.

16 THE COURT: What do you want to say about that, Mr.
17 Rukavina?

18 MR. RUKAVINA: Thank you, Your Honor. We're fine
19 with that.

20 Let me just point out, so that if the Court is impatient
21 or frustrated, we did move Exhibit 78 to be filed under seal.
22 The Court did enter an order allowing it to be filed under
23 seal. So that the Court doesn't think that somehow we were
24 negligent in that.

25 But February the 5th works for us.

1 THE COURT: Okay. All right. So I have an
2 unredacted clean copy up here, which, if and when I admit it,
3 we will put it under seal in our exhibit room, or I guess our
4 electronic exhibit room.

5 So, we'll come back on the 5th at 9:30. But I am not -- I
6 am not done. Yes, I am frustrated. Yes, I'm impatient. I
7 have asked myself "Why are we here?" so many times today. Why
8 are we here? I mean, I've had this conversation before. I
9 mean, we had a, as you know, a very lengthy hearing on the
10 motion for a TRO or preliminary injunction against Mr. Dondero
11 personally. And I think it was Mr. Morris who said, it's a
12 little bit like Groundhog Day. You know, that was actually a
13 more flattering way of describing it than I might have. I
14 might have said this is reminding me of Albert Einstein's
15 definition of insanity. You all know what I'm talking about?
16 When you're doing the same thing over and over again and
17 expecting a different result.

18 And, you know, no offense, Mr. Dondero, if you're still
19 there listening, but that's what it feels like to me. I mean,
20 it is -- it's the same thing over and over again. And we've
21 spent very, very, very little time talking about the January
22 9th, 2020 corporate governance settlement agreement. Of
23 course, it was mentioned extensively in the pleadings, at
24 least by the Debtor. But, you know, I've heard all of this
25 evidence today, and I'm going to hear more evidence,

1 apparently, on the 5th. But Paragraph -- was it 9? --
2 Paragraph 9 of the January 9th, 2020 settlement agreement.
3 The order directed Mr. Dondero not to "cause any related
4 entity to terminate any agreements with the Debtor."

5 And, you know, I thought to myself as I was reading,
6 preparing for this hearing, that, you know, I seem to remember
7 those words meant so, so much to me. And then this reply
8 brief was filed by the Debtor at 6:00 or 7:00 o'clock last
9 night, and it gave an excerpt of the transcript, the hearing
10 where I approved this corporate governance settlement
11 agreement, and I said, that language is so important to me
12 because of my history in the *Acis* case, I want it in the
13 order. I don't even -- I don't want it merely in the term
14 sheet, and then, of course, the order cross-references,
15 approves the term sheet. I want that in the order. Because,
16 you know, I knew, even with this highly-qualified independent
17 board of directors, and even with this very sophisticated
18 Creditors' Committee with very sophisticated professionals
19 monitoring everything that happened, and having not just the
20 monitoring rights but the standing to pursue things, I knew,
21 even with this great system that had been negotiated in the
22 January term sheet, there was the possibility of things
23 happening through Dondero-controlled entities indirectly. And
24 so that's why we had that Paragraph 9. So, --

25 (Interruption.)

1 THE COURT: I don't know what that was I just heard,
2 but someone needs to put me on mute.

3 So, I mean, we've heard a lot. We've heard a lot, but --

4 MR. DONDERO: Hello? Your Honor? Your Honor?

5 THE COURT: Okay. I --

6 MR. DONDERO: Hi. Jim Dondero.

7 THE COURT: Oh, okay. I'm still talking. I'm still
8 talking. But I --

9 MR. DONDERO: Okay.

10 THE COURT: But I said --

11 MR. DONDERO: I'm sorry.

12 THE COURT: I said at the hearing on the preliminary
13 injunction as to Mr. Dondero personally, do you remember what
14 I said, I said life changed when you put your company in
15 Chapter 11. And, you know, even if you had stayed on as
16 president of the Debtor, life changed. Okay? Because you're
17 a debtor-in-possession. You have to say, "Mother, may I?" to
18 the Court. Creditors get to object to things. So things
19 changed.

20 But things really, really, really changed, you know, they
21 changed in October 2019, and then they changed dramatically in
22 January 2020, when independent board members were put in place
23 and you were taken out of management.

24 So, the reason I'm coming back to that concept is this:
25 I've heard a lot about the preferred shareholders didn't like

1 the trades Mr. Seery was implementing, the sale of AVYA, the
2 sale of SKY. They didn't like it. Well, I mean, I hate to
3 say something flippant like tough luck, but really: Tough
4 luck. Okay? We all know that with a company like this, with
5 a company like Acis, it's complicated, right? Because you've
6 got a fiduciary duty to your creditors to maximize value of
7 the estate so creditors get paid in Chapter 11, right? But
8 meanwhile, you know, you've got to have fiduciary duties, I
9 don't know if it's directly to preferred shareholders or just
10 to the CLOs. But whatever it is, you know, there may be
11 differing views that individual preferred shareholders have.
12 But Mr. Seery is in charge. The Debtor is in charge. You
13 don't like it, I'm sorry, but he's in charge.

14 So, you know, I thought, am I going to come in here today
15 and see all kinds of specific contractual references, where, I
16 don't know, somehow you have an argument that you can control
17 buys and sells? Of course, in this case, it would just be
18 sells at this point. You know, no. I knew I wasn't going to
19 see that. And I haven't.

20 So I don't know what I'm going to hear more on the 5th
21 that is going to tilt me a different way, but right now, if I
22 had to rule right now, this would be a total no-brainer to
23 issue this preliminary injunction. Okay? I feel like it's
24 been teed up almost like find Dondero in contempt, find these
25 entities in contempt. What I'm here on today is whether I

1 should issue a preliminary injunction, and the December
2 letters, the emails, the communications, they lead me to
3 believe that this preliminary injunction is needed because
4 someone doesn't understand that Mr. Seery is in charge and the
5 preferred shareholders, the Funds, the Advisors, they don't
6 have the ability to interfere with what he's doing in running
7 the company.

8 And the threats of we're going to, you know, direct -- we
9 may direct the CLO Issuer to terminate the Debtor: I mean,
10 it's just -- there's no sound business justification for that.
11 Okay? I don't know what we're doing, where we're going.

12 Mr. Dondero, I said to you in December, you know, I really
13 wanted to encourage good-faith negotiations on your possible
14 pot plan because I thought you wanted to save your baby. But
15 the more I hear, the more I feel you're just trying to burn
16 the house down. Okay? Maybe it's an either/or proposition
17 with you: I'll either get my company back or I'll burn the
18 house down. That's what it feels like. And I have no choice
19 but to enter preliminary injunctions with this kind of
20 behavior.

21 So, I'm very frustrated. I'm very frustrated. I don't
22 know if anyone wants to say anything or we just end it on this
23 frustrating note.

24 Mr. Rukavina, did you want to let your client speak, or
25 no?

1 MR. RUKAVINA: Your Honor?

2 THE COURT: Not your client.

3 MR. RUKAVINA: No, but --

4 THE COURT: The client representative.

5 MR. RUKAVINA: Your Honor, I take issue with what the
6 Court has said, but we did file a motion yesterday to file a
7 plan under seal. It is -- Mr. Dondero, can you mute your
8 phone? The Court should have seen that by now. It is a pot
9 plan with much more cash consideration. We have discussed it
10 with the Debtor and the Committee. We are in earnest
11 negotiations. I have no reason to believe or disbelieve that
12 we're close to a settlement.

13 But recall what I said at the beginning. We asked the
14 Debtor to continue this hearing. We said, You have a TRO that
15 ends February the 15th. Why are you doing this? Well, the
16 Debtor did it to smear Mr. Dondero on a very carefully crafted
17 record, without telling you the other half of it. And when I
18 tried to have Mr. Post explain it, opposing counsel won't let
19 me even tell you our views. So there is a competing plan. We
20 want to try --

21 THE COURT: You tried to get him to testify about
22 comments to CFRs when he has shown no expertise whatsoever --

23 MR. RUKAVINA: That's fine.

24 THE COURT: -- to permit that.

25 MR. RUKAVINA: And I understand, Your Honor. I don't

1 want -- Your Honor has made her evidentiary rulings. I'm not
2 here to second-guess them.

3 I'm telling you that Mr. Dondero -- and more importantly,
4 the other companies, *i.e.*, NexPoint -- we heard you loud and
5 clear. We did not just send forward some cocktail-napkin term
6 sheet. I spent the weekend and Friday preparing a
7 comprehensive plan and disclosure statement. I hope that the
8 Court will allow it to be filed under seal. Exclusivity has
9 expired. I am asking to file it under seal only.

10 THE COURT: Tell me what utility that has. What
11 utility does that have if you don't have one plan supporter?
12 I mean, where are we going with this? I have invited, I have
13 encouraged, I have directed good-faith negotiations with the
14 Committee. If you don't have the Committee on board, what
15 utility is there in allowing you to file a plan under seal?

16 MR. RUKAVINA: Well, if it's filed under seal, Your
17 Honor, then, really, no one is going to be prejudiced or hurt.
18 But we have not been told --

19 THE COURT: Then why --

20 MR. RUKAVINA: -- from the Committee --

21 THE COURT: Then why are we doing it? Help me to
22 understand the strategy. Maybe I'm just naïve.

23 MR. RUKAVINA: Your Honor, there is no strategy and
24 the Court is not naïve. Pursuant to an agreement of the
25 Committee and the Debtor, I sent that draft plan to them over

1 the weekend, and they agree it's not solicitation. It has not
2 gone to the creditors. No one has seen it.

3 The reason why we sent it to the Committee and the Debtor
4 was to foster ongoing negotiations. We had negotiations last
5 night. The Committee and the Debtor had negotiations last
6 night. We've been promised a response in the next couple of
7 days, and we have a follow-up meeting scheduled for Thursday.

8 The reason why I wanted the plan filed under seal is so
9 that there is a record of what is being discussed so the U.S.
10 Trustee can see it, if she wants to, and so that other key
11 constituents, if they want to or have a reason to, can see it.

12 But I agree with you: That plan ain't going nowhere if we
13 don't have some material creditor support. We won't know that
14 for a couple more days.

15 So my only point in saying this to Your Honor is that we
16 are working earnestly, we are increasing our consideration, we
17 have heard you loud and clear, and all the parties are
18 negotiating.

19 Again, we did not want this hearing to happen today
20 because it's a step backwards from negotiations, not a step
21 forward. Thank you.

22 MR. POMERANTZ: Your Honor, may I be heard?

23 THE COURT: Go ahead, Mr. Pomerantz. Go ahead.

24 MR. POMERANTZ: Mr. Rukavina sent us over the plan,
25 and we had no problem with it being sent to the Committee. He

1 then sent us over the motion. Now, aside from the fact that
2 the motion contains some statements which the Debtor strongly
3 disagrees with, with respect to the ability of administrative
4 claims or other claims to be assumed, but putting that aside,
5 we were concerned that the filing of a plan on the docket,
6 unsealed, would be a distraction.

7 Having said that, we also saw utility in the plan being
8 put in the hands of the largest creditors so that they can
9 evaluate what was being proposed.

10 We told Mr. Rukavina we have no problem if the plan was
11 filed under seal, stayed under seal until after confirmation,
12 and then, in exchange, we would agree to something that we
13 don't think we had to agree: That he could send the plan to
14 UBS, to Acis, to Redeemer, to Meta-e, to HarbourVest, and
15 Daugherty. Essentially, all the players in the case. Mr.
16 Rukavina said he would consider that, and then just filed his
17 motion.

18 We don't have any problem with him doing that still,
19 sending it to the six creditors so they can look at it. We
20 don't think it should be unsealed on the docket.

21 And the discussion of status of negotiations, Your Honor,
22 as we've told you many times before, we would love there to be
23 a plan. We would love there to be support of a plan. Mr.
24 Dondero asked to approach the board and speak to the board
25 yesterday. We heard him out. The plan essentially is the

1 same document and the same term sheet, I think, that has been
2 floating around for several weeks.

3 Having said that, we said, We are not going to stand in
4 the way of Mr. Dondero and the Creditors' Committee. And if
5 the Creditors' Committee and Mr. Dondero have a meeting of the
6 minds, if there's any desire of them to have more time, we
7 would be supportive of it. I'll let Mr. Clemente respond as
8 to whether there's any negotiation -- (echoing.) But when Mr.
9 Rukavina said that last night there were negotiations between
10 the Debtor and Mr. Dondero, that's just not accurate. We, we
11 look at ourselves as the honest broker. But at the end of the
12 day, as Your Honor has remarked many times throughout this
13 case and just remarked a few moments ago, unless the
14 Creditors' Committee supports this plan, it is DOA. And we
15 have communicated that several times to Mr. Dondero and his
16 team.

17 So, I just wanted to speak to correct the record. We're,
18 again, supportive of a plan if there can be one. But at this
19 point, we haven't seen anything, the parties coming any closer
20 or any more negotiations, and we just have to get confirmed
21 sooner rather than later (echoing), prepared to go forward.

22 MR. CLEMENTE: Your Honor, it's Matt Clemente at
23 Sidley. I'm happy to make some comments to Your Honor, --

24 THE COURT: Okay.

25 MR. CLEMENTE: -- if you -- if you wish.

1 THE COURT: Please do.

2 MR. CLEMENTE: I think it's fair to say that the
3 Committee believes the plan needs to go forward next week,
4 Your Honor. We have, of course, taken your direction very
5 seriously, and we very seriously consider all of the
6 communications we get from Mr. Dondero. There exists still a
7 material value gap in what is being offered under Mr.
8 Dondero's plan, as well as a quality of the value.

9 So, Your Honor, while we continue to consider the plan and
10 what we receive from Mr. Dondero, I do not want to leave Your
11 Honor with the impression that the Committee feels like we are
12 close to an agreement, and we anticipate going forward with
13 the plan next week.

14 That being said, we of course will respond to Mr. Dondero
15 as we review the plan, but as I sit here today, I don't
16 believe that we are close. But, again, the Committee will
17 continue to review it, and we should anticipate going forward
18 with confirmation next week.

19 THE COURT: All right. So, you don't have any
20 problem with the plan being filed under seal?

21 MR. CLEMENTE: Your Honor, we -- the Committee does
22 have the plan, and I guess I'm not sure I'd see the point of
23 having it filed it under seal. I think it serves to confuse
24 issues. But, you know, hearing what Your Honor said earlier,
25 I don't think we need to continue to bring different fights in

1 front of Your Honor, so I'm not sure that I see necessarily
2 the harm in a plan being filed under seal, again, with the
3 idea that, you know, why bring -- continue to bring fights to
4 Your Honor if we don't need to?

5 THE COURT: All right.

6 MR. CLEMENTE: But what I do think is clear, Your
7 Honor, that I do want to express to you is that the
8 representations in that motion the Committee do not believe
9 are accurate. We do not believe that there's been a
10 significant value increase. We do not believe that we are
11 close. That would be the point that I would make in
12 connection with a response to that motion. So, but in terms
13 of filing it under seal, I'm not sure the Committee has a
14 strong feeling that that should not happen.

15 THE COURT: Yes.

16 MR. RUKAVINA: And Your Honor, very quickly, --

17 THE COURT: The words --

18 MR. RUKAVINA: -- I never represented that we're
19 close.

20 THE COURT: The words I remember in the motion were
21 significant value increase, something to that effect. But
22 also more recovery than the plan that's on file.

23 (Echoing.)

24 THE COURT: So I was kind of darn curious to see it
25 just for that.

1 MR. RUKAVINA: And Your Honor, obviously, because
2 there's many people on this call, I don't want to run afoul of
3 any kind of procedures. I'd be happy to walk Your Honor
4 through, but I can't, not with 90 people on the call.

5 THE COURT: Right.

6 MR. RUKAVINA: I did not represent that we're close
7 to a settlement in that motion, and I did not send the plan to
8 those people that Mr. Pomerantz mentioned.

9 So, right now, the Committee, the Debtor, and the
10 employees, because they requested it after Mr. Pomerantz
11 approved it, have what I would like to file under seal. I'm
12 not suggesting here today that it go any farther than being
13 filed under seal, but at least it be there for some record.

14 THE COURT: Well, didn't you -- did I dream this? --
15 didn't you say that there would be something like 48 hours for
16 people to object or then it would be filed not under seal?
17 Did I dream that?

18 MR. RUKAVINA: Your Honor, that was my proposal, and
19 Your Honor can certainly reject that. Mr. Pomerantz asked
20 that the plan should never be unsealed pending confirmation of
21 the Debtor's plan. I have a different proposal. Your Honor
22 will rule and we'll comply with Your Honor's ruling.

23 MR. DONDERO: Jim Dondero here. Can I have two --
24 two quick minutes and just say two quick things?

25 THE COURT: Well, only if your counsel permits it. I

1 don't want to get in --

2 MR. RUKAVINA: I just don't -- yeah. Mr. Dondero, if
3 you would please just not describe the substance, the economic
4 substance of our proposed plan, not with so many people on the
5 line.

6 MR. DONDERO: Sure. I just want to make two quick
7 points. I couldn't apologize more for taking the Court's time
8 today. It wasn't our 'druthers. You heard, I think, at least
9 five or six hours from the Debtor. You never once heard them
10 say that their activities didn't violate the Advisers Act.
11 And they never once said that violating the Advisers Act
12 wasn't a big deal. You know, they never said that.

13 What they tried to say, oh, we have these other contracts.
14 Let's try and turn this into an injunction against Dondero
15 interfering. But they never -- they never denied that Dondero
16 and the NexPoint team was trying to do what was in the best
17 interest of investors and that they had violated the Advisers
18 Act.

19 I think, in normal course, each side would have had an
20 expert and you could have opined on whether it was a violation
21 of the Advisers Act, but they know they did something wrong so
22 they're trying to make it an injunction against me. Okay.
23 That's all I have to say about that point.

24 As far as the alternative plan, Your Honor, we heard you
25 loud and clear. And the economics that we put forward, I

1 can't talk them about specifically, but they're at least 20
2 percent better than what the Debtor has put forward as far as
3 a plan. And what we put forward is elegant, it's simpler, it
4 treats the employees fairly, it gives the business continuity,
5 it gives investors continuity, and it's not just a harsh,
6 punitive liquidation that's going to end up in a myriad of
7 litigation.

8 We're paying a premium, it's a capitulation price, to try
9 and get to some kind of settlement. And I encourage you to
10 look at it. It's elegant. It's straightforward. It's
11 simple. And now that you've encouraged and gotten us up to a
12 number that's well in excess of the Debtor, maybe a little
13 pressure on other people to treat employees fairly, maybe not
14 liquidate a business that's important in Dallas, that has been
15 a big business for a number of years, doing enormous good
16 things for a lot of people.

17 You know, we went into bankruptcy with \$450 million of
18 assets and almost no debt. And we've been driven into the
19 ground by the process. And then the plan is to just harshly
20 liquidate going forward. I -- I -- it's crazy. I don't know
21 what else to do to stop the train other than what we've
22 offered.

23 THE COURT: All right. Well, I hear what you're
24 saying, and I do, just because -- I don't know if you left the
25 room or not, but we did have discussion of Section 206 of the

1 Investment Advisers Act today. It was put on the screen. Mr.
2 Post was asked what was unlawful as far as what had happened
3 here, what was going on here, what was fraudulent, deceptive,
4 or manipulative, in parsing through the words of the statute.
5 And he said Mr. Seery engaged in deceptive acts because he
6 wasn't trying to maximize value. Okay? I'm not an expert on
7 the Investment Advisers Act, but I know that that was not a
8 deceptive act.

9 And so I'll allow the plan to be filed under seal, but
10 it's not going to be unsealed absent an order of the Court.
11 Okay? So we'll just leave it at that for now. And while I
12 still encourage good-faith negotiations here, I've said it
13 umpteen times, where you're tired of the cliché, probably:
14 The train is leaving the station. And if you want the Court
15 to have patience in the process and if you want the parties to
16 cooperate in good faith, it might help if we didn't have
17 things like Dugaboy and Get Good Trust filing a motion for an
18 examiner 15 months into the case.

19 I mean, it feels to me, Mr. Dondero, whether I'm right or
20 wrong, that it's like you've got a twofold approach here: I
21 either get the company back or I burn the house down. And I'm
22 telling you right now, if we don't have agreements, --

23 MR. DONDERO: That's not true.

24 THE COURT: -- if we don't have agreements and we
25 come back on the 5th for a continuation of this hearing and a

1 motion to hold you in contempt, you know, I'm leaning right
2 now, based on what I've heard so far, and I know I haven't
3 heard everything, but I'm leaning right now towards finding
4 contempt and shifting a whole bundle of attorneys' fees.
5 That, to me, seems like the likely place we're heading.

6 I mean, I commented at the December hearing on the
7 preliminary injunction against you personally that it had been
8 like a \$250,000 hearing, I figured, okay, just guesstimating
9 everybody's billable rate times the hours we spent. Well,
10 here we were again, and I know we've got all this time outside
11 the courtroom preparing, taking depositions. I mean, what
12 else is a judge to think except, by God, let's drive up
13 administrative expenses as much as we can; if we can't win,
14 we're going to go down fighting? That's what this looks like.
15 Okay? So if it's not really what's going on, then you've got
16 to work hard to change my perceptions at this point.

17 MR. RUKAVINA: Your Honor, I hear everything what
18 you're saying, and I'm going to discuss it very bluntly with
19 my clients. But we're being asked not to exercise contract
20 rights in the future. This is not a contempt hearing. And
21 Your Honor, we did ask and offered the estate a million
22 dollars, found money, plus to waive almost all our plan
23 objections, if they would just put this case on pause for 30
24 days.

25 So we are trying. We are trying creative solutions here.

1 We know that the train is leaving. We've put our money where
2 our mouth is. We will continue trying. But Your Honor, this
3 is not a contempt proceeding, and my clients are not Mr.
4 Dondero. You've heard they're independent boards.

5 MR. POMERANTZ: I can't leave that last comment
6 without a response. Yes, there was an offer of a million
7 dollars, by an entity that owes the estate multiples of that.
8 So they are offering to pay us something that they already owe
9 us. So Mr. Rukavina continues try to do this. We will not
10 stand for it.

11 MR. RUKAVINA: That is not a fair statement, sir. I
12 misrepresented nothing. We were offering you a million
13 dollars, with no conditions, earned upon receipt, with no
14 credit, no deduction for any of our liability. So you're free
15 to say no, sir, but you're not going to tell the judge that I
16 misrepresented something.

17 THE COURT: All right.

18 MR. POMERANTZ: Should tell the Court --

19 THE COURT: You know what?

20 MR. POMERANTZ: -- that that entity owed the Debtor.

21 THE COURT: You know what? You know what? I am more
22 focused on, Mr. Rukavina, your comment that this Court can't
23 enjoin your clients from exercising contractual rights when,
24 again, in January of 2020, the representation was made and it
25 was ordered, "Mr. Dondero shall not cause any related entity

1 to terminate any agreements with the Debtor." Okay? That was
2 -- go back and look at the transcript. That was so meaningful
3 to me.

4 We were facing a possible trustee. And that's what I did
5 in the *Acis* case. Okay? I had a Chapter 11 trustee. And it
6 was not a perfect fit, to be sure. But it is where we were
7 heading in this case, had the lawyers and parties not
8 negotiated what they did. That was a very important
9 provision, convincing me that, you know what, I think the
10 structure they've got will be better than a trustee. And it
11 has, for the most part. But the fees have gone out the roof,
12 and I lay that at the feet of Mr. Dondero, for the most part.
13 Okay? We have a bomb thrown every five minutes by either him
14 personally or the Dugaboy or the Get Good Trust or the Funds
15 or the Advisors or I don't know who else. Okay?

16 So the train is leaving the station, unless you all come
17 to me and say, okay, we've maybe got a -- Mr. Pomerantz's word
18 -- grand solution here. Okay? If you get there in the next
19 few days, wonderful. Okay? But I don't know what else to say
20 except I'm tired of the carpet-bombing, and if I had to rule
21 this minute, there would be a huge amount of fee-shifting for
22 what we went through today, for what we went through in
23 December, for the restriction motion that, after I called it
24 frivolous, the lawyers were sending letters pretty much
25 regurgitating the same arguments. All right. So, not a happy

1 camper.

2 But upload your order on the motion to seal the plan.

3 And, again, it's not going to be unsealed absent a further
4 order of the Court. And if you all come to me next week and
5 say, hey, we've got something in the works here, okay, I'll
6 consider unsealing it and letting you go down a different
7 path. But I'm not naïve. I feel like this is just more
8 burning the house down, maybe. I don't know. I hope I'm
9 wrong. I hope I'm wrong. But all right. So I guess we'll
10 see you next week.

11 MR. POMERANTZ: Thank you, Your Honor.

12 MR. MORRIS: Thank you, Your Honor.

13 THE COURT: All right. We're adjourned.

14 MR. RUKAVINA: Thank you, Your Honor.

15 THE CLERK: All rise.

16 (Proceedings concluded at 6:08 p.m.)

17 --oOo--

18

19

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

01/28/2021

24

25 Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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